

**This version combines the redlined version posted  
for public comment with the changes made by  
the Court after the public comment period closed.**

[Most of the post-comment period edits appear in green,  
although stricken language does not. Punctuation corrections are not noted.]

**B-1000-1. ABBREVIATIONS AND DEFINITIONS**

(a) Definitions Abbreviations Applicable to All Rules

- (1) Clerk: the Clerk of the Court.
- (2) Court: the United States Bankruptcy Court for the Southern District of Indiana.
- (3) “Fed.R.Bankr.P.” refers to the Federal Rules of Bankruptcy Procedure.
- (4) “S.D.Ind. B-\_\_\_\_\_” refers to a local rule of the United States Bankruptcy Court for the Southern District of Indiana.
- (5) “S.D.Ind. L.R. \_\_\_\_\_” refers to a local rule of the United States District Court for the Southern District of Indiana.
- (6) Fed.R.Civ.P.: refers to the Federal Rules of Civil Procedure.
- (37) UST: the United States Trustee for Region 10.
- (8) U.S.C.: refers to the United States Code.
- (9) SSN: Social Security Number.
- (10) ITIN: Individual Taxpayer Identification Number.

(b) Definitions Applicable to All Rules Governing Chapter 11 Cases

- (1) — 9006(c) Request: defined in S.D.Ind. B-9006-1.
- (2) — Applicant: defined in S.D.Ind. B-2014 -1.
- (31) Debtor: includes both debtors in a joint case and a debtor-in-possession in a Chapter 11 case. Except as to official forms which must be signed by the debtor (or debtor's representative in a non-individual case), a requirement imposed upon the "Debtor" by these rules shall be performed by counsel for the debtor, if any.
- (2) Trustee or trustee: refers to the trustee appointed in a bankruptcy case under 11 U.S.C. §§701, 702, 1104, 1202, or 1302.
- (4) — Employment Application: defined in S.D.Ind. B-2014 -1.
- (5) — Financing Motions: defined in S.D.Ind. B-4001-2.
- (6) — First Day Motions: defined in S.D.Ind. B-9013-3.
- (7) — Motion to Sell: defined in S.D.Ind. B-6004-1.
- (83) Notice List: the Service List and parties required to receive notice pursuant to Fed.R.Bankr.P. 2002, unless the dDebtor has obtained an order limiting notice.
- (9) — Professional: defined in S.D.Ind. B-2014-1.
- (104) Service List: defined in Debtor, Debtor’s counsel, the twenty largest unsecured creditors in a Chapter 11 case or, if applicable, the unsecured creditors’ committee, the UST, all secured creditors, any indenture trustee, any other committee appointed under 11 U.S.C. § 1102 or 1114, and any counsel or party that has filed an appearance pursuant to S.D.Ind. B-2002-1(c) B-9010-1. If counsel appears for any party listed above, then such counsel shall be substituted

- for the party for purpose of this definition, absent a specific request by the party that it be retained on the Service List.
- (5) Non-electronically in reference to filing means delivery of documents on paper, and includes CDs and diskettes.
- (6) Non-electronically in reference to service means other than by electronic means and in accordance with Fed.R.Bankr.P. 7004.
- (7) Court's website: refers to the Court's website located at <http://www.insb.uscourts.gov>

~~(c) — Abbreviations~~

~~“S.D.Ind. B-\_\_\_” refers to one of these local rules. “S.D.Ind. L.R. \_\_\_” refers to a local rule of the United States District Court for the Southern District of Indiana.~~  
~~“Fed.R.Bankr.P.” refers to the Federal Rules of Bankruptcy Procedure and the Interim Bankruptcy Rules as adopted by General Order 05-0002.~~

Comments

The Rule has been reorganized to start with abbreviations, as some of those appear in the definitions section. The definitions subsection lists only definitions that appear with some frequency. Definitions specific to a particular rule remain in that Rule. The Committee set forth the definition of Service List because of the deletion of S.D.Ind. B-2002-1(c)(2) which previously defined the term. The Committee also added definitions for ‘non-electronic’ filing and service. The Rules previously referred to ‘conventional’ filing, which the Committee opted to change because ‘conventional’ filing now is electronic. To simplify the rules, a definition for “Debtor” has been added, which in most instances also means debtor’s counsel.

**B-1002-1. MINIMUM FILING REQUIREMENTS TO COMMENCE A VOLUNTARY CASE**

(a) Initial Filing

A voluntary case is commenced by the filing of a voluntary petition and along with the lists, schedules, statements and other documents required by ~~the Federal Rules of Bankruptcy Procedure~~ Fed.R.Bankr.P. 1002, 1007 and 11 U.S.C. §§301 and 521 or by subparagraph (b) of this rule. Filings can be made either conventionally, electronically or electronically non-electronically in accordance with S.D. Ind. B-5005-1(c) and B-5005-4.

(b) Emergency Filing; Minimum Required

Any voluntary petition filed without the lists, schedules ~~and~~ statements and other documents required ~~in by~~ Fed.R.Bankr.P. 1007 and 11 U.S.C. §521 must be accompanied by:

- (1) if the ~~d~~Debtor is an individual, Exhibit D (Official Form B1D) with a certificate of credit counseling from the course provider or, if the certificate is not filed,

Exhibit D (Official Form B1D) and, if applicable, a motion seeking a deferral or waiver of the credit counseling requirement pursuant to 11 U.S.C. § 109(h)~~(4)~~;

(2) if the Debtor is an individual, a Statement of Social Security Number (Official Form B21);

(23) the appropriate filing fee, an Application to Pay Filing Fee in Installments (Official Form B3A) or, if a Chapter 7, an application requesting waiver of the filing fee (Official Form B3B)~~or application to pay filing fee in installments (Official Form B3A);~~

~~(3)~~ Bankruptcy Form LBF-1 (Appendix, p. A2) available at [www.insb.uscourts.gov](http://www.insb.uscourts.gov);

(44) ~~if filed conventionally~~ Uploaded creditor information necessary to provide proper notice to all scheduled creditors or, if filed non-electronically, the diskette required by S.D.Ind. B-1007-1~~(c)~~ (b); and

(55) in a Chapter 11 case, the list of the twenty largest unsecured creditors and a list of creditors who have or claim to have a secured claim.

Failure to submit the above required items at the time of filing or within three (3) days thereafter may result in dismissal of the case pursuant to S.D. Ind. B-1017-1(b). Any request for an extension of time to file the other documents required by this rule must comply with Fed.R.Bankr.P. 1007.

(c) Number of Copies Filing a Case Non-Electronically

For cases filed non-electronically, the filing party shall comply with the filing requirements in S.D.Ind. B-5005-1(c). ~~conventionally, the number of copies of petitions, accompanying lists, schedules, and statements required by Fed.R.Bankr. P. 1007 to be filed in voluntary Chapter 7, 11, 12, 13 and 15 cases is as follows:~~

- ~~(1) — in cases under Chapter 7, 12, 13, and 15 a signed original, plus one copy thereof;~~
- ~~(2) — in cases under Chapter 11, a signed original, plus one copy thereof;~~

~~(d) —~~ Additional Requirements

~~In addition to complying with the Federal Rules of Bankruptcy Procedure and Official Forms, all petitions shall:~~

- ~~(1) — state the street address, including the full street number and zip code, of the debtor;~~
- ~~(2) — state the full name of the debtor; and~~
- ~~(3) — state the county of debtor's residence, domicile or place of business.~~

~~(e)~~ d Place of Filing

For cases filed ~~conventionally~~ non-electronically, all petitions, lists, schedules, statements, pleadings and other documents required by the Bankruptcy Court to

commence a case shall be filed with the office of the Clerk ~~for in~~ the division ~~of the~~ district where the principal place of business, domicile, residence or principal assets of the ~~d~~Debtor have been located for such ~~a~~ period of time as required by 28 U.S.C. § 1408. If the Court determines that a case has been filed in the incorrect division, the Court may transfer the case to the correct division without notice. All papers tendered for filing after the commencement of a case shall be filed with the office of the Clerk in the division where the case is pending.

### Comments

To match the new ECF Administrative Policies and Procedures Manual and the definition in B-1000-1, references to filing ‘traditionally’ were changed to ‘non-electronically.’ The introductory clause to subparagraph (b) was altered to make clear that only the documents listed in the subsection are required with a minimum filing. A ‘minimum filing’ is the information required by the Clerk so that a meeting of creditors can be established and notice sent. The rule has been updated to match current practice - including the requirement that creditor information be uploaded or submitted within 3 days. However, the requirement of a Certificate of Emergency has been dropped. Subparagraph (b)(5) was amended to require a Chapter 11 debtor to file a list of secured creditors with its petition. Such revision was needed because of the elimination of the requirement under S.D.Ind. B-2002(c)(2) that the debtor file “an Initial Service List” within 15 days of the petition identifying secured creditors. Subparagraph (c) was changed to refer parties to S.D.Ind. B-5005-1(c), which contains instructions for filing non-electronically. Subparagraph (d) was dropped because it adds nothing to the petition form itself. Subparagraph (e) - now (d) - was amended to spell out the Court’s power to make intradistrict transfers when a case is filed in the wrong division. Other changes are for style consistency.

## **B-1006-1. PAYMENT OF FILING FEE IN INSTALLMENTS**

### ~~(ca)~~ Application Form

The application ~~must~~ shall substantially conform to Official Form B3A ~~and shall be signed by both the debtor(s) and attorney for the debtor(s).~~

### ~~(ab)~~ Payment Schedule

~~Parties~~ A Debtor filing an application to pay fees in installments shall propose a payment plan in accordance with the installment fee schedule maintained by the Clerk and available at [www.insb.uscourts.gov](http://www.insb.uscourts.gov).

### ~~(bc)~~ Payment Due Dates

Unless otherwise ordered, ~~P~~payments shall be due on the same day of the month ~~as the date~~ on which the petition was filed. If ~~that~~ the installment due date falls on a day that the Court is closed, payment is due no later than the next business day.

### ~~(d)~~ Installment Fees in Chapter 13 Cases

Installment fees authorized in a Chapter 13 case shall be paid directly by the Debtor to the office of the Clerk in the division where the case is pending and not through the Chapter 13 plan.

### Comments

The Committee proposes reordering the subparagraphs for logical flow, and adding a phrase to Payment Due Dates that confirms the Court's ability to set a different payment schedule. The Committee dropped the requirement of counsel's signature on the installment fee application, as that is not required on the form itself. The Committee also proposes adding subparagraph (d), to ensure that debtors do not attempt to direct the trustee to pay fees as part of the plan. Other changes are for clarity.

## **B-1007-1. LISTS, SCHEDULES AND STATEMENTS; TIME LIMITS**

### **(a) Additional Requirements**

In addition to complying with the Federal Rules of Bankruptcy Procedure and Official Forms, all schedules and statements shall:

- (1) contain a response to each request for information on the statement of affairs and the schedules, even if such response is “no”,<sup>22</sup> “none”,<sup>22</sup> or “not applicable”,<sup>22</sup>
- (2) specifically describe and itemize all property claimed as exempt, and state the statutory reference and section number of the statute under which such exemption is claimed; ~~and~~
- (3) list the creditors on each schedule in alphabetical order, including the full mailing address and zip code for each listed creditor, or statement that the address is unknown; and
- (4) provide on Schedule E the name and address of any entity holding a domestic support obligation, and identify that entity as the holder of a domestic support obligation, even if the Debtor is current on that obligation when the case is filed.

### **(b) Statement of Social Security Number**

~~Pursuant to Fed.R.Bankr. P. 1007 (f) a debtor who is an individual shall submit a verified statement that sets out the debtor's social security number. In a voluntary case the debtor(s) shall submit the statement with the petition. In an involuntary case the debtor(s) shall submit the statement within fifteen (15) days after the entry of the order for relief.~~

### **(c) Providing Diskette in Addition to the List of Creditors Information for Cases Filed Non-electronically**

~~In a~~ All cases filed conventionally a and any amendment that adds creditors, filed non-electronically, must be accompanied by a CD or diskette listing the complete names and addresses of the creditors listed in the case must be submitted filing. In Chapter 11 cases,

the CD or diskette must include equity security holders, if applicable. An exception to the requirement will be considered by the Court if a request for waiver is filed with the petition.

(d) Extensions of Time

(1) Requests Generally

Any request for an extension of time to file the initial lists, schedules, statements and other documents required to commence a new case shall be treated by the Court as a request for the maximum allowable extension of time for each applicable chapter and the Clerk will provide notice of the opportunity to object except as described in subparagraphs (2) and (3) below.

(2) Presumption of No Objection

Unless the dDebtor is a “small business” filing under Chapter 11, as defined by 11 U.S.C. § 101(51D), the UST and any panel trustee appointed in a case are deemed to have no objection to any original request for extension of time within which to file schedules or related documents if that request seeks an extension to no more than forty-five (45) days after the date the petition is filed. ~~The Clerk need not send notice of any such request to the UST or any panel trustee.~~ If the dDebtor is a small business filing under Chapter 11, then the UST is deemed to have no objection to any original request for an extension of time within which to file schedules or related documents if that request seeks an extension to no more than thirty (30) days after the date the petition is filed.

(3) Debtor’s Waiver of Objection to Timeliness of Notice of Presumed Abuse

If the new date for filing documents is extended beyond the deadline in 11 U.S.C. §704(b)(1), then the Debtor is deemed to have waived any objection to the timeliness of a notice of presumed abuse which is filed no later than fourteen (14) days after the missing documents are filed or after the meeting of creditors has been concluded, whichever is later.

(e) Dismissal

~~In any case where lists, schedules, and statements are not filed with the voluntary petition, within fifteen (15) days thereafter, or within such other period set by order, the Court shall enter an order of dismissal unless a motion for extension of time has been filed prior to the expiration of the period. The Court shall also enter an order of dismissal if the statement of social security number is not filed with the voluntary petition or within three (3) days thereafter.~~

(f) Reinstatement

~~Parties filing a motion to reinstate or a motion to reopen a dismissed case for noncompliance shall submit the documents required contemporaneously with the motion to reinstate or the motion to reopen. The motion will not be considered unless the~~

~~deficiency is cured or a showing of good cause is made as to why additional time is needed.~~

### Comments

The Committee, in subparagraph (a)(4), added new requirement of DSO details. Subparagraph (b) was dropped because it added nothing to Fed.R.Bankr.P. 1007. Subparagraph (c) - now (b)- was amended because non-electronic filers do not submit a 'list' of creditors, but instead provide a diskette or CD. Subparagraph (d) - now (c) - was amended to capture current practice as to requests for extensions of time to file initial case documents, and to establish by local rule the extension given the UST to file a notice of presumed abuse when the required documents have not been filed by the debtor before the deadline in §704(b)(1). Because the rule is about schedules and forms, the Committee also proposes to move subparagraphs (e) and (f) to S.D.Ind. B-1017-1 because national rule 1017 discusses dismissal for failure to file schedules or pay the filing fee.

## **B-1007-2. NOTICING, BALLOTING AND CLAIMS AGENTS DOCKETS**

### (a) Noticing, Balloting, and Claims in Chapter 11 Cases with More than 300 Creditors

~~Unless The Clerk will supervise preparation of claims dockets in all cases. However, subject to the Administrative Procedures for Electronic Filing and unless~~ excused by order of the Court, if the number of scheduled creditors in any Chapter 11 case exceeds ~~500~~ 300, the ~~debtor or trustee~~ in a Chapter 11 case shall ~~employ, with leave of Court, an entity to assist the Clerk in performance of this function under direction of the Clerk.~~ propose the retention pursuant to 28 U.S.C. §156(c) of an entity to handle noticing (the "Noticing Agent"), an entity to receive and process claims (the "Claims Agent"), and an entity to process plan ballots (the "Balloting Agent"). One entity may serve in all three capacities (the "Agent"). Prior to employment, the proposed Agent shall meet with the Clerk or the Clerk's designee and agree on terms establishing the interactions between the Agent and the Clerk, which shall be incorporated in the order authorizing the employment of the Agent ("the Employment Order") or in a written agreement between the Clerk and the Agent ("the Agreement") that shall be made part of the record.

### (b) Noticing Agent

A Noticing Agent shall distribute notices as directed by the Court and provide proof of service information to the Debtor. That information shall be filed as established by the Agreement or the Employment Order.

### (c) Claims Agent

If a Claims Agent is to be employed, then the Agreement or Employment Order shall address each of the following areas:

#### (1) Delivery of Claims Received by the Court

The Agreement or the Employment Order should establish procedures for handling of claims filed with the Clerk prior to and after the employment of the Claims Agent.

(2) Mailing of Proof of Claim Forms and Notice of Bar Date

Proofs of Claim with a notice of bar date should be mailed by the Claims Agent and should reflect the scheduled amount of the creditor's claim. Unless alterations are approved by the Court, after notice to any committee and the UST, the forms shall comply substantially with the Official Form B10. The forms will instruct claimants to send claims to the Claims Agent and not the Court.

(3) Handling of Claims

Generally, upon receipt of a claim, the Claims Agent should promptly date-stamp it, assign a claim number, scan the original, retain originals in a fire-proof safe or vault, and return a date-stamped copy to the claimant (if a self-addressed, postage paid envelope was provided).

(4) Maintenance of the Claims Register

Usually, the Claims Register should be maintained by the Claims Agent. The Claims Agent should list the claim on the register within three days of receipt, in alphabetical order, according to the name of the claimant (last name for individuals) and include the claimant's address, claim number assigned, date received, dollar amount claimed, and classification of claim.

(5) Audits of Claims Records

The Agreement or the Employment Order may provide for the periodic audit of claims information by the Clerk, a representative of the creditors' committee, or some other entity.

(6) Transmission of Claims Register

The Agreement or Employment Order should provide the mechanism and timing for delivery of updated Claims Registers to the Clerk (Example: the register may be transmitted in both an electronic and paper format, bi-weekly, until the claims bar date and then monthly thereafter).

(7) Mailing List

In addition to the Claims Register, the Claims Agent should maintain a separate mailing list including the claimants' addresses, edited to reflect any notice of change of address.

(8) Transfers of Claims



The Agreement or the Employment Order should establish responsibility and method for processing transfers of claims.

(9) Retention/Destruction of Documents

The Agreement or Employment Order should provide for delivery of a final Claims Register and for the retention or destruction of documents received by the Claims Agent.

(d) Balloting Agent

The Balloting Agent will receive, record and tabulate ballots. The Agreement or Employment Order should provide for filing of a declaration showing the results of balloting and provide for the retention or destruction of original ballots.

Comments

The current rule directs the Debtor to retain a claims agent if the schedules list more than 500 creditors, but provides little guidance as to that agent's duties. The rule clarifies that retention is pursuant to 28 U.S.C. §156(c). The revised rule expands the requirement of an agent to include not only claims but also noticing and balloting. Because each large Chapter 11 case is different, the proposed rule requires dialogue between the Agent and the Clerk to ensure that documents which would otherwise be filed with or processed by the Clerk are handled appropriately.

Changes Made After Comment Period

The number of creditors triggering this rule was dropped from 500 to 300. The phrase "to the Clerk" was added in (c)(6).

**B-1009-1. AMENDMENTS OF VOLUNTARY PETITIONS, LISTS, SCHEDULES, AND STATEMENTS OF FINANCIAL AFFAIRS**

(a) Form of Amendments

All amendments to voluntary petitions, lists, schedules, ~~lists and~~ statements ~~of affairs and other documents~~ shall comply with Fed.R.Bankr.P. 1009, ~~S.D.Ind. B-1002-1~~ and S.D. Ind B-1007-1, and shall be accompanied by the appropriate filing fee. Any amendment which adds a creditor shall state the date the debt was incurred. Each amendment shall also be verified and signed ~~in the original and if filed conventionally, filed in the same number as the original petition and schedules~~ by the Debtor under penalty of perjury. If an amendment changes the totals on any schedule, then the ~~d~~Debtor shall also file an ~~a~~Amended Summary of Property Schedules and ~~Debts~~ an Amended Statistical Summary of Certain Liabilities. An amendment which adds creditors and is filed ~~conventionally~~ non-electronically shall be accompanied by a CD or diskette listing the added creditors only. ~~If an amendment which adds creditors is filed, a diskette listing the added creditors shall be submitted to the Clerk within two (2) business days.~~

(b) Service of Amendments on Added Adding Creditors: Notice Requirements

- (1) If an amendment adds creditors, the Debtor shall also upload creditor information at the time of filing or, if filed non-electronically, shall provide a new diskette pursuant to S.D. Ind. B-1007-1(c).
- (2) The ~~d~~Debtor shall provide give notice to added creditors ~~serve a copy of the amendment and all documents previously issued to creditors, including the 11 U.S.C. § 341 meeting notice (even if the date has passed), any notice of and~~ provide copies of notices and documents in the case as appropriate, including the notice of the meeting of creditors with full SSN or ITIN, notice of the bar date, the most recent plan or amended plan, and confirmation hearing notice, ~~on any added creditor, the trustee, and the UST. If the amendment is filed after the first date set for the meeting of creditors, the debtor shall also give notice that the deadline for filing a complaint to determine non-dischargeability pursuant to 11 U.S.C. § 523(c) is extended to sixty (60) days after the date the amendment is filed. The original amendment shall be filed with the Clerk along with a detailed and shall~~ file a certificate of service pursuant to S.D. Ind. B-9013-2. If the Debtor asserts that no notice is required, the Debtor shall file a statement in lieu of notice. A sample form is available on the Court's website.

(c) Notice of Amendments to Social Security Number or Individual Taxpayer Identification Number: Notice Requirements

If a SSN or ITIN is incorrect and the notice of the creditors' meeting has not been issued, the Debtor shall alert the Clerk by telephone to determine the necessary steps to correct the error prior to issuance of the meeting notice. If the notice of the creditors' meeting was issued with an incorrect SSN or ITIN, the Debtor shall contact the Court and complete steps (1) through (4) below, as applicable.

- (1) If the SSN or ITIN on any original Statement of Social Security Number (Official Form B21) is incorrect, the Debtor shall submit an amended statement to the Clerk, ~~and complete steps (3) through (5) below.~~
- ~~(2) If the debtor's social security number was entered erroneously during the filing of the case and notice of the creditors' meeting has not been issued, the debtor shall alert the Clerk by telephone and then complete step (3) below, if necessary. If notice of the creditors' meeting has been issued with an incorrect number, then the debtor shall complete steps (3) through (5) below.~~
- ~~(3)~~ If the ~~error involves the~~ last four digits of the ~~social security number,~~ SSN or ITIN listed on the first page of the voluntary petition are incorrect, the ~~d~~Debtor shall file an amended petition with the correct last four digits of the SSN or ITIN.
- ~~(4)~~ The ~~d~~Debtor shall serve a notice of the ~~correction~~ corrected SSN or ITIN ~~(and a copy of the amended petition, if one was filed)~~ on all creditors, any trustee, and the UST.

- (54) The Debtor shall file ~~with the Clerk a truncated or redacted copy of the notice, showing only the last four digits of the social security number, and a detailed~~ a certificate of service pursuant to S.D. Ind. B-9013-2.

(d) Amendments Changing Debtor's Name: Notice Requirements

If the Debtor's name is incorrect and the notice of the creditors' meeting has not been issued, the Debtor shall alert the Clerk by telephone to determine the necessary steps to correct the error prior to issuance of the meeting notice. If the notice of the creditors' meeting was issued with an incorrect Debtor name, the Debtor shall contact the Court and complete steps (1) through (4) below, as applicable.

- (1) If the Debtor's name on the petition is incorrect, the Debtor shall submit an amended petition.
- (2) If the Debtor's name used for any electronic signature is incorrect, the Debtor shall file all necessary amended declarations and other signature pages originally required upon initial filing of the bankruptcy petition— a declaration under penalty of perjury affirming that the documents filed with the incorrect electronic signature were signed in the original by the debtor using the correct name, and that the documents are true and correct to the best of the debtor's knowledge, information and belief. A sample declaration is available on the Court's website.
- (3) The Debtor shall serve notice of the corrected name on all creditors, trustee, and the UST.
- (4) The Debtor shall file a certificate of service pursuant to S.D. Ind. B-9013-2.

Comments

In (a), the Committee added the requirement of an amended statistical summary. In (b), the Committee dropped extension of the § 523 deadline for creditors added after the initial meeting notice. That extension is not contemplated by the Code or the Rules, and the extension may create confusion as to the protection from discharge already afforded late-added creditors by §523(a)(3). The revised language also places responsibility on the debtor to provide previously issued notices and pertinent documents to added creditors. In (c), the Committee clarified what to do if an SSN problem is discovered before notice of the first meeting of creditors is sent, and simplified the instructions to follow when discovered after notice. The rule also adds a new subparagraph (d), which describes the proper procedure when an error in the debtor's name was made at time of filing.

Changes Made After Comment Period

Subparagraphs (c) and (d) instruct the debtor to give notice; proposed change makes subparagraph (b) more parallel and allows use of form notice to be posted on Internet (replacing current version). Concept of 'statement in lieu of notice to added creditors' is placed in the Rule. Form has been offered and used for years, but not referenced in rule.

In development of procedures, determined that it is too difficult to file individual signature pages, and would be unduly burdensome to require refiling of the petition, schedules, and statement of financial affairs. Therefore, in (d)(2) opted for use of a declaration affirming the debtor's signature on the originals and the accuracy of those.

## **B-1010-1. INVOLUNTARY PETITIONS COMMENCED BY NON-ATTORNEYS.**

### **(a) Seal Upon Initial Filing**

If an involuntary petition is commenced by a party who is not represented by counsel, the Clerk shall assign a number to the case and seal the name, the petition, and any documents filed with the petition.

### **(b) Review of and Continuation or Termination of Seal**

Within ~~ten~~ **seven (7)** days of the initial filing, the Court shall review the petition and supporting documents and determine whether the seal should be continued, lifted or modified and, if necessary, hold a hearing on same.

### **(c) ~~Service on~~ Notice to UST**

Immediately upon filing of any involuntary petition subject to this Rule the Clerk shall provide telephonic notice of the case to the UST.

### Comments

A pro se party with an improper purpose could commence an involuntary case against any other party and immediately upon filing, such records would be available electronically to all. As a result, the alleged debtor could suffer irreparable harm as a result of the filing and publication of the information. That harm could be minimized if the case were not made public immediately but, instead, only after judicial review.

Upon review, the Court may lift the seal, modify it so that certain documents are not sealed, provide that the case documents be available only at the public terminal for a period of time (similar to transcripts), or craft other relief that would balance the interests of the alleged debtor against those of the petitioning party and the general requirement of public access to case records.

### Changes Made After Comment Period

Changed 10 days to seven, to match national numbering system. Changed title to subparagraph (c) to be more accurate.

## B-1015-1. CONSOLIDATION OR JOINT ADMINISTRATION OF CASES PENDING IN SAME COURT

### (a) Joint Cases

~~A~~Unless otherwise ordered by the Court, a joint case commenced pursuant to 11 U.S.C. § 302(a) shall be jointly administered ~~unless otherwise ordered by the Court, upon motion of a party in interest.~~ The separate estates of ~~d~~Debtors in a joint case will only be consolidated upon motion, after notice.

### ~~(b)~~ Pleadings in Jointly Administered Cases Interim Orders for Joint Administration

~~If the Court orders~~ Upon request, the Court may grant a motion for joint administration ~~in of two or more separately filed cases pursuant to under Fed.R.Bankr.P. 1015(b), the caption of all documents and pleadings other than claims filed in any of the jointly administered cases shall list the names of all of the cases subject to joint administration, but only the lowest case number of the jointly administered cases. Unless otherwise ordered by the Court, document and pleadings will be docketed on a single docket on an immediate, but interim, basis subject to later review upon notice.~~

### (b) Claims in Jointly Administered Cases Manner of Joint Administration

~~A claim filed in a case that is being jointly administered should list the name and number of each of the jointly administered cases in which the claim is to be filed. Unless otherwise ordered, jointly administered cases shall be administered as follows:~~

#### (1) Designation of Lead Case

The case with the lowest number shall be designated as the “Lead Case”.

#### (2) Caption

All papers, except for Proofs of Claim and notices of meetings of creditors pursuant to 11 U.S.C. §341, shall be captioned under the Lead Case name and number followed by the words “Jointly Administered”. A proof of claim shall indicate only the case name and number of the case in which the claim is asserted. The caption shall not include the word “Consolidated” to refer to joint administration.

#### (3) Docket

A single case docket shall be maintained after the entry of the order for joint administration under the case number of the Lead Case. If joint administration is terminated, documents filed after the order terminating joint administration shall be filed and docketed in the separate cases.

#### (4) Claims

A separate claims register shall be maintained for each case. Claims shall be filed only in the name and case number of the Debtor against which the claim is asserted. A separate claim must be filed in each jointly administered cases in which a claim is asserted.

(5) Ballots

Ballots shall be styled only in the case name and number of the member case for which the plan being voted on was filed.

~~(d) — Pleadings and Claims in Substantively Consolidated Cases~~

~~If after motion and notice the Court orders the substantive consolidation of two or more cases, the caption of all documents, pleadings, and claims filed in the consolidated case shall list only the name of the consolidated case and that case number, which shall be the name and number of the first case filed. Unless otherwise ordered by the Court, documents, pleadings, and claims filed after the order of substantive consolidation will be docketed on a single docket.~~

(c) Substantive Consolidation

Unless otherwise ordered, substantively consolidated cases shall be administered as follows:

(1) Designation of Lead Case

The case with the lowest number shall be designated as the “Lead Case”.

(2) Caption

All papers in substantively consolidated cases shall contain in the caption only the name and case number of the Lead Case, unless one of those cases is for an individual Debtor; then the caption shall include the Lead Case and the case name and number for any individual Debtor.

(3) Docket

A single case docket shall be maintained after the entry of the order for consolidation. If consolidation is later terminated, then documents filed after the order terminating consolidation shall be filed and docketed in the separate cases.

(4) Claims

After consolidation all claims shall be filed in the Lead Case. Any claim filed and docketed prior to the consolidation shall be considered as if filed in the

substantively consolidated cases but shall remain on the claims register of the originally filed case.

### Comments

The Committee added subparagraph (b) to address those cases where joint administration is necessary, or administratively more convenient, on an immediate basis. Presumably, such motions will be filed at the initiation of the case. Such relief is on an interim basis only and could theoretically be undone if later deemed to be inappropriate. Subparagraph (c) is amended to reflect actual practice as to the captions in both jointly administered and substantively consolidated cases, because both jointly administered and substantively consolidated case captions use the concept of a Lead Case. One exception to the caption rule is added, for substantively consolidated cases involving an individual. When that individual's name is not in the case caption, confusion arises as to notices and the discharge. The Committee proposes a change to current practice as to the filing of claims. If cases are jointly administered, then separate claims registers will be maintained for each case. If cases are substantively consolidated, one claims register will be maintained after the order of consolidation, but claims previously filed in separate cases will remain on the separate claims registers.

### Changes Made After Comment Period

While developing procedures, it was determined that the concept of interim joint administration is not needed. A motion for joint administration is a 'first day' motion in Chapter 11 cases. Fed.R.Bankr.P. 1015(b) does not require notice and a hearing. Motions for joint administration are granted at the 'first day' hearing, and are not revisited at a later hearing unless relief sought.

Also while reviewing procedures, the absence of guidance on what happens after termination of joint administration and consolidation was noted and has been added. It was also determined that, when consolidation involves one or more individuals or an individual and a corporation, while it is desirable to have the individual's name on the caption it is not necessary to have the case number.

Finally, decided to abandon concept of 'deconsolidation,' which creates confusion, and use instead the concept of terminating both joint administration and consolidation.

## **B-1017-1. CONVERSION AND DISMISSAL ~~FROM CHAPTER 13 TO CHAPTER 7~~**

~~A debtor seeking to convert a Chapter 13 case to Chapter 7 shall do so by filing a notice of conversion pursuant to 11 U.S.C. § 1307 of the Bankruptcy Code and Fed.R.Bankr.P. 1017(f)(3). Any notice of conversion shall be filed with the Clerk accompanied by proof of service on the designated Chapter 13 standing trustee and the UST and any required fee.~~

### (a) "Automatic" Dismissal

#### (1) Notwithstanding 11 U.S.C. §521(i)(1), no case shall be deemed dismissed except upon entry of an order of dismissal.

(2) If a party moves for dismissal pursuant to §521(i)(2) and if such motion specifically requests dismissal within ~~five (5)~~ seven (7) days, the Court may dismiss the case without further notice or hearing if the docket is missing one of the items identified in 11 U.S.C. §521(a)(1)(A) and (a)(1)(B)(i) through (v). If the docket contains a filing denominated as such but which the moving party contends fails to include all the required contents, the motion shall identify the alleged deficiency. The movant shall serve the motion on the Debtor, trustee, and UST along with a notice requiring a response to be filed within fourteen (14) days of service. If no such response is timely filed, the Court may dismiss the case without further notice or hearing. If a response is timely filed, the Court will either rule on the motion or set the matter for hearing.

(3) The Court may also dismiss a case pursuant to 11 U.S.C. §521(i)(1) on its own motion.

(b) Dismissal for Failure to File Required Documents or Pay Filing Fee

(1) In any case where the lists, schedules, statements and other documents described in Fed.R.Bankr.P. 1007(b)(1), (4), (5) and (6) are not filed with the voluntary petition, within fourteen (14) days thereafter or within such other period set by Court order, the Court shall enter an order of dismissal without further notice or hearing unless a motion for extension of time has been filed prior to the expiration of the period.

(2) The Court shall also enter an order of dismissal without further notice or hearing unless the documents required by Fed.R.Bankr.P. 1007(b)(3) (credit counseling documentation or request for waiver under 11 U.S.C. §109(h)(4)) and by Fed.R.Bankr.P. 1007(f) (SSN statement, Official Form B21) are ~~not~~ filed with the voluntary petition or within three (3) days thereafter.

(3) In any case where the filing fee has not been paid at the time of filing or within three (3) days thereafter, the Court shall enter an order of dismissal without further notice or hearing unless an application to pay the filing fee in installments, or, if a Chapter 7, an application to waive the filing fee, has been filed prior to the expiration of the period. If a Debtor fails to pay a fee installment when due, the Court shall dismiss the case without further notice or hearing.

(4) In any case where creditor information has not been provided at the time of filing or within three (3) days thereafter, the Court shall enter an order of dismissal without further notice or hearing unless a motion for extension of time has been filed prior to the expiration of the period.

(c) Obtaining Relief from Dismissal Order

(1) Reopening Case



If a dismissed case has been closed, any party seeking relief from the dismissal order must first file a motion to reopen and pay the required fee. Then the party shall file a motion for relief from the dismissal order pursuant to Fed.R.Bankr.P. 9024 as set out in (2). (That motion for relief can be filed contemporaneously with the motion to reopen.)

(2) Requirement of Motion for Relief from Dismissal Order

If the dismissed case has not been closed or it has been reopened, then the party shall file the motion for relief from dismissal order (unless it was filed with the motion to reopen). If the case was dismissed because of a failure to file required documents, contemporaneously with the motion(s), the movant must submit the documents required, file a motion seeking an extension of time for submitting those documents, or file a notice of submission stating that the documents are no longer required. If the case was dismissed for failure to pay the filing fee or an installment, then the movant must, contemporaneously with the motion for relief from dismissal order, pay the filing fee or any missed fee installment, or file a motion seeking an extension of time to pay the fees. If the movant fails to comply with these requirements the motion for relief from dismissal order will not be considered.

(3) Refund of Reopening Fee

If the motion to reopen or for relief from the dismissal order is denied, the Court may direct the refund of the filing fee for the motion to reopen only.

(d) Conversion

A Debtor seeking to convert from Chapter 12 or 13 to any other chapter shall file a notice of conversion pursuant to Fed.R.Bankr.P. 1017(f)(3). A Debtor's motion to convert pursuant to Fed.R.Bankr.P. 1017(f)(2) shall be served on the trustee, if any, and the UST.

(e) Service of Motion to Dismiss

A Debtor's motion to dismiss pursuant to Fed.R.Bankr.P. 1017(f)(2) shall be served on the trustee, if any; the UST; and counsel of record.

Comments

Subparagraph (a) attempts to capture General Order 06-0001 on 'automatic' dismissal, and closely mirrors the language found in the local rule of the Bankruptcy Court for the District of Arizona on the same topic. Subparagraph (b) is moved here from 1007-1, and now includes reference to the failure to pay fees or provide creditor information. Subparagraph (c) is former 1007-1(f), amended in late 2008 with additions for clarity.

Subparagraph (d) concerns conversions. A notice of conversion is appropriate for Chapter 12 and 13 cases when the debtor wants to change chapters. In all other circumstances, even where the Code

would seem to allow conversion as of right, a motion to convert is required. Fed.R.Bankr.P. 1017(f)(2) refers to Fed.R.Bankr.P. 9013 to determine the service of these motions, and that rule seems to invite the Court to establish noticing requirements. Therefore, the Committee recommends that service be required on the case trustee and the United States Trustee when the debtor seeks to convert.

Similarly, new subparagraph (e) clarifies service of a motion to dismiss. In addition to the case trustee and UST, the movant should also serve counsel of record. (This service will normally be accomplished through CM/ECF and the Notice of Electronic Filing.)

The Committee acknowledges recent case law suggesting that the rights to dismiss or to convert are not as ‘automatic’ as they seem. However, after much discussion the Committee elected not to recommend requiring a motion to dismiss where the Code says a notice suffices, nor to recommend any ‘hold’ on a notice or motion when none is required by the Code or the Rules. In those unusual cases where a party contends that a dismissal or conversion is suspect, the proper avenue for obtaining redress is the motion for relief from judgment/order.

#### Changes Made After the Comment Period

Changed five days to seven, in subparagraph (a)(2), to match uniform numbering. Deleted misplaced ‘not’ from subparagraph (b)(2).

### **B-1017-3. EFFECT OF DISMISSAL ON ADVERSARY PROCEEDINGS**

Whenever a case under the Bankruptcy Code is dismissed, any adversary proceeding arising under, arising in, or related to the case then pending will be dismissed without prejudice unless otherwise ordered by the Court either in the ~~dismissal~~ order dismissing the case or by separate order. Cases that have been removed to the Court shall be remanded to the Courts from which they were removed.

#### Comments

The Committee recommends that the rule be retained as written with minor changes for clarity.

### **B-1019-1. CONVERSION OF CHAPTER 11, CHAPTER 12, OR CHAPTER 13 CASE TO CHAPTER 7 CASE**

#### **(a) Schedule of Post-Petition Debts**

The schedule of post-petition debts required by Fed.R.Bankr.P. 1019 shall comply with the requirements of S.D.Ind. B-1007-1(a). ~~The debtor(s) or attorney for the debtor shall serve a copy of the schedule on added post-petition creditors, the trustee, and the UST along with a copy of the 11 U.S.C. § 341 meeting notice, if issued in the converted case. A detailed certificate of service listing names, address, and documents served, in~~

~~compliance with S.D. Ind. B-9013-2, shall be filed with the schedule of post-petition debts.~~

(b) Service of Notice of Bar Dates and Meeting of Creditors; Certificate of Service

The Debtor shall send to added creditors the following:

- (1) A notice providing twenty-one (21) days for the filing of a request motion for payment of an administrative expense and, unless a notice of insufficient assets to pay a dividend has been mailed in accordance with Fed.R.Bankr.P. 2002(e), the time for filing a claim of a kind specified in 11 U.S.C. §348(d) (A form notice is available on the Court's website);
- (2) Unless the schedule of post-petition debts was filed and creditors were added before issuance of the notice of the meeting of creditors under the new chapter, a copy of the notice of the meeting of creditors under the new chapter with the Debtor's full SSN or ITIN.

Debtor shall file a certificate of service as to these documents in compliance with S.D.Ind. B-9013-2.

(bc) No Delay of First Meeting

Failure of the trustee, ~~the former debtor-in-possession~~, or the ~~d~~Debtor to comply with Fed.R.Bankr.P. 1019 shall not delay the scheduling of the 11 U.S.C. §341 meeting for the Chapter 7 case.

(d) Waiver of Conversion Fee for Chapter 13 Trustees

The conversion fee is waived for any motion to convert filed by a Chapter 13 trustee in a case to which that trustee has been assigned.

Comments:

Instructions as to service are moved from subparagraph (a) to new subparagraph (b). Subparagraph (b) is revised to follow the procedure found in Fed.R.Bankr.P. 1019(6). Subparagraph (c) is unchanged. Subparagraph (d) captures General Order 08-0001.

Changes Made After Comment Period

Use of term 'request' would send filers seeking that event in ECF, so changed to 'motion.'

**B-2002-1. ~~APPEARANCES AND~~ NOTICES TO CREDITORS, EQUITY SECURITY HOLDERS, AND UNITED STATES TRUSTEE**

(a) Appearances and Withdrawal of Appearances Generally Obtaining Service of Pleadings and/or Notices

~~Appearances and withdrawal of appearances are governed by S.D.Ind. B-9010-1. Interested parties or their counsel who wish to receive copies of pleadings and documents (other than proofs of claim) shall file with the Clerk and serve the Debtor with an appearance in accordance with S.D. Ind. B-9010-1. A 'Request for Notice' or similar pleading will be considered a request pursuant to Fed.R.Bankr.P. 2002(g) and will not entitle the filer to service of pleadings or of notices other than those to which the filer is already entitled, nor will the address on the request be deemed the appropriate address for service of process unless the pleading so states.~~

(b) Limited Notice in Chapter 7 Cases -

In Chapter 7 cases, after all time periods for filing proofs of claim have expired, all notices required by Fed.R.Bankr.P. 2002(a), except the notice of the final report and of dismissal or denial of discharge, shall be mailed only to the trustee, the UST, ~~and~~ creditors who have filed claims and creditors, if any, who are still permitted to file claims by reason of an extension granted under Fed.R.Bankr.P. 3002(c)(1) or (2).

~~(c) — Appearances and Service Lists in Chapter 11 Cases~~

~~(1) — Appearances~~

~~Interested parties or their counsel who wish to receive copies of pleadings and documents (other than proofs of claim) filed in a Chapter 11 case shall file with the Clerk and serve the debtor and the debtor's counsel with an appearance. Parties shall give their address, telephone and fax numbers, and are encouraged to provide an e-mail address and to authorize service by e-mail. Any change to or withdrawal of an appearance shall be filed with the Clerk and served upon the debtor and the debtor's counsel.~~

~~(2) — Service List~~

~~Unless otherwise ordered by the Court, the Chapter 11 debtor shall be responsible for maintaining a list of all parties who have entered an appearance or who are otherwise required to be on the list by order of the Court ("the Service List"). The initial service list shall include the debtor, the debtor's counsel, the twenty largest unsecured creditors, counsel for the unsecured creditors' committee, the UST, all secured creditors or their counsel, any indenture trustee, and any party who has filed an appearance. The initial Service List shall be filed with the Clerk no later than fifteen (15) days after the filing of the petition.~~

~~(3) — Updated Service List~~

~~The initial Service List shall be updated by the debtor no later than thirty (30) days after the petition date, and shall be updated every thirty (30) days thereafter for the~~

~~six (6) months after the petition date if any changes have occurred. After six (6) months the Service List shall be updated as new appearances are filed. A copy of each updated Service List shall be filed with the Clerk and served on the entities on the list. Each Service List shall include the last date updated and when possible, the debtor or the debtor's counsel shall make the Service List available on a website.~~

~~(4) — Deletion from Service List~~

~~If counsel appears for a creditor on the Service List, then counsel shall be substituted for that creditor on the Service List, absent a specific request to be retained on the Service List. An unsecured creditor on the list of the twenty largest unsecured creditors that is not selected to serve on the creditors' committee shall be deleted from the Service List upon the filing of the notice of the appointment of the creditors' committee, absent a specific request to be retained on the Service List. After the appearance of counsel for the creditors' committee, committee members shall be deleted from the Service List, absent a specific request by that creditor to be retained on the Service List.~~

(c) Authorization for Chapter 13 Trustee to Recover Noticing Costs from Estate

If the Chapter 13 trustee uses the services of an independent contractor for noticing, the trustee may recover the actual costs of noticing charged by that contractor from each estate. If noticing is performed by the trustee, the trustee may recover from each estate the actual costs of postage plus \$.18 (eighteen cents) for each notice or as otherwise ordered by the Court. These noticing fees can be recovered from the first and any subsequent monies received from the Debtor, whether before or after confirmation. The Chapter 13 trustee shall list expenses charged for noticing in each case and separately identify the notices sent in the final report.

(d) Returned and Undeliverable Mail

(1) Designation of Debtor as Return Addressee

The Clerk may instruct the Court's noticing agent to designate the Debtor as the return addressee for orders and notices, including the notice of the commencement of the case and meeting of creditors and any order confirming a plan, dismissing a case, or discharging a Debtor.

(2) Returned Mail Received by Debtor and Duty to Provide Accurate Address

The Debtor shall file a Notice of Change of Address for any creditor or party in interest whose address appears undeliverable based either on the Debtor's receipt of returned mail or ~~the certificate of service~~ information received from the Court's noticing agent. In addition, the Debtor shall serve the documents required by S.D.Ind. B-1009-1(b)(2). If the Debtor is unable to determine a correct address for a creditor or party in interest, the Debtor may file a statement notice specifying the

creditor's name and reporting that a correct address cannot be located. Upon the filing of such a ~~statement~~ notice, the Clerk shall code the address so that no further notices or orders are sent to that creditor or party in interest.

(3) ~~Returned Mail Received by the Clerk, Undeliverable Addresses Identified by Clerk's Noticing Agent and Duty to Correct~~

Unless otherwise ordered, the Clerk shall docket any returned mail received by the Court in a ~~particular~~ an open case. The Clerk shall code the address for any creditor whose mail was returned or any creditor whose address is identified on the first certificate ~~of service~~ filed by the Clerk's noticing agent as undeliverable so that no further notices or orders are sent to that creditor or party in interest. The Debtor shall file a Notice of Change of Address for any such creditor, if the correct address can be identified, and shall serve the documents required by S.D.Ind. B-1009-1(b). ~~Returned mail received in a closed case shall be discarded.~~

Comments

The Committee determined that the rule blurred the concepts of appearing in a case and taking the steps necessary to receive notices. Appearances would be governed exclusively by S.D.Ind. L.R. B-9010-1. The treatment parties can expect by filing a 'request for notice' is clarified.

The requirement that Debtors generate and maintain a Service List has been eliminated. Compliance with the rule has been spotty, and neither the Court nor the Clerk has regularly enforced the rule. Because the term "Service List" is still used throughout these rules, the definition of the term is now set forth in S.D.Ind. B-1000-1(b)(4). An e-mail address on the appearance form is now required, and reference to consenting to service by e-mail is dropped as participation in electronic filing is such consent. Subparagraph (b) is amended to require notice of the final report on all creditors, as required by the national rule.

Subparagraph (c) replaces an old general order authorizing Chapter 13 trustees to recover noticing costs. The trustees advised that the authority is still needed.

Subparagraph (d) attempts to capture current practices as to returned mail, and is based on a general order from the District of South Carolina. Debtors are expected to provide a notice of change of address when that information is available. The rule adds the requirement that, if the address cannot be found and the mail was returned to the debtor, then the debtor must file a statement that the address is unavailable. With that statement, the Clerk can code the address so that no further notice are sent and postage costs are saved. When addresses are changed, the Debtor is responsible for ensuring that the party receives previously issued notices and documents.

Changes Made After Comment Period

In subparagraph (d)(2), concept of filing a notice is more common than filing a statement, so change proposed. Form notice prepared for posting on Internet. In subparagraph (d)(3), clarified that Clerk actions occur only in open cases; in closed cases returned mail is discarded. Because of

impending changes to the way BNC will notify debtors and their counsel of address issues, language modified to accommodate those changes.

## **B-2003-1 NOTICE OF CONTINUED MEETING OF CREDITORS**

### **(a) Notice When Meeting Continued Before Convened.**

A Debtor's request to continue a meeting of creditors should be directed to the trustee in a Chapter 7, 12, or 13 case, and to the UST in a Chapter 11 case. The request should not be filed with the Court. The Debtor shall seek a continuance when the cause necessitating the continuance becomes known to the Debtor. When the continuance is sought before the meeting has been convened, and the trustee grants the request, the Debtor shall send notice of the continued meeting to all creditors, parties in interest, the trustee and the UST, and shall file a certificate of service of that notice in accordance with S.D.Ind. B-9013-2. If a trustee continues a meeting before it has been convened, then the trustee shall send notice of the continued meeting to all creditors, parties in interest and the UST, and shall file a certificate of service of that notice in accordance with S.D.Ind. B-9013-2.

### **(b) Notice When Meeting Continued After Convened**

When a meeting is continued after it has been convened, the trustee or UST shall provide oral notice of the continued date, time, and location of the first meeting, and shall file notice of the continued meeting date, time, and location with the Court. No further distribution of notice is required.

#### Comment

The rule attempts to capture actual practice concerning continuances of first meetings. The rule makes clear that debtor's counsel should request a continuance as soon as the need for a continuance is known, and should not wait until the meeting is called to advise the trustee.

## **B-2014-1. EMPLOYMENT OF PROFESSIONAL PERSONS AND TREATMENT OF RETAINERS IN CHAPTER 11 CASES**

### **(a) Employment Application**

In a Chapter 11 case, any person (~~“the Applicant”~~the “Applicant”) seeking Court approval of the employment of a professional person (~~“the Professional”~~the “Professional”) pursuant to 11 U.S.C. §§ 327, 1103-(a) or 1114 shall file with the Court an application and a supporting affidavit or verified statement of the professional complying with Fed.R.Bankr.P. 2014 (~~“an Employment~~ an “Employment Application”), and a proposed order on the Employment Application. Promptly after discovering any additional material information relating to such employment (such as additional potential or actual conflicts of interest) the Applicant and Professional shall file and serve a supplemental affidavit disclosing the additional information.

(b) Service of Notice and Hearing

The Employment Application (including supporting affidavit or verified statement of the Professional and any supplemental affidavit) shall be served on the Service List. Notice of the Employment Application, an objection deadline, and any hearing shall be served on the Notice List. Any creditor or other party in interest who wishes to resist the Employment Application must on or before the objection deadline provided in the notice, file an objection and serve such objection upon the Applicant, the Professional, and the Service List. If no objection is filed by the objection deadline, the Court may grant the Employment Application and approve the proposed employment without a hearing or further notice. If the Employment Application is granted, the employment shall be effective as of the date the Employment Application was filed unless otherwise ordered by the Court.

(c) Conflicts

If a Professional seeks to resolve any potential conflict of interest concerning any other client or former client, the Professional shall comply with applicable Rules of Professional Conduct. All consents or waivers of conflicts of interest (“waivers”) shall be in writing. The Professional shall serve copies of all such waivers upon the Applicant and the Service List with the Employment Application or promptly following receipt by the Professional of a waiver.

(d) Disclosure of Compensation and Retainers

As part of the Employment Application, a ~~d~~Debtor and a proposed Professional shall obtain approval ~~of from~~ the Court of an arrangement whereby a retainer paid by the ~~d~~Debtor to the Professional may be retained and applied to the satisfaction of such Professional’s fees and expenses. Those financial arrangements may include provisions similar to the following:

- (1) The retainer shall be applied to satisfy the Professional’s fees and expenses as they are approved by the Court pursuant to 11 U.S.C. §§ 330 and 331;
- (2) The Professional may hold the entire retainer without any application ~~to~~ for payment of fees and expenses until final approval by the Court of such Professional’s final application for fees and expenses, with such allowed interim fees and expenses paid periodically from other estate assets;
- (3) Pursuant to subparagraph (e) of this Rule, the Professional may draw against the retainer at specified intervals prior to the award of fees and expenses by the Court; and,
- (34) Any other arrangement approved by the Court.



(e) Periodic Payment Procedure

Subject to prior Court approval, the Professional and the ~~d~~Debtor may agree to a streamlined procedure for periodic payment of fees and costs prior to allowance by the Court. “Payment” includes any transfer of funds from the ~~d~~Debtor to the Professional after the filing date. Any proposed procedure shall provide for payment of no more than 80% of requested fees; but may provide for payment of 100% of expenses.

- (1) All such arrangements shall provide that prior to the fee draw the Professional must file with the Clerk a Notice of Draw which sets forth the amount of the proposed draw and contains, as an attachment, a copy of the periodic billing which supports the amount of the draw.
- (2) A copy of the Notice of Draw shall be served upon the Service List and, in addition, a copy of the relevant periodic billing shall be delivered to the UST. Failure of a party to object to the draw does not affect the party’s right to object to the final allowance of fees and expenses. Court approval of the draw procedure is not approval of fees and expenses. All fees and expenses drawn are subject to disgorgement until the Court allows the final fee application of the Professional.

Comments

The Committee recommends that the rule be retained as written, with only minor stylistic changes and clarification in subparagraph (d) that one way to treat the retainer is to draw on it periodically, in accordance with arrangements approved by the Court under subparagraph (e).

Changes After Comment Period

Added opening clause, “In a Chapter 11 case” to make clear that rule sets out noticing and other practices for Chapter 11 employment applications only.

**B-2015-1. REPORT OF OPERATIONS**

(a) Monthly Operating Reports

For all cases filed under Chapter 7 in which the trustee operates a business, and for cases under Chapters 11 ~~and~~; 12, ~~and 13~~ in which a plan is not confirmed, the trustee or the ~~d~~Debtor shall file a monthly report of operations. For Chapter 13 cases in which the Debtor operates a business, the Debtor shall file reports of operations as required by the trustee. For Chapter 11 and Chapter 7 cases, ~~that~~ the report shall be in a form acceptable to the UST. For Chapter 12 and Chapter 13 cases, ~~that~~ the report shall be in a form acceptable to the ~~appointed~~ trustee. Reports required by this rule shall be filed no later than ~~fifteen (15)~~ fourteen (14) days after the end of the ~~calendar month~~ reporting period.

(b) Service

The report shall be served upon the UST, the ~~debtor and counsel for the d~~Debtor, any trustee and counsel for the trustee, the Service List in a Chapter 11 case, and any party requesting service of the reports.

(c) Penalties for Failure to File

The failure to file operating reports may constitute cause for the conversion or dismissal of the case, or for the appointment (or removal) of a trustee.

Comments

Subparagraph (a) has been modified to capture actual practice among the Chapter 13 trustees - some of whom do not require monthly reports.

**B-2015-3. TRUSTEES: REPORTS AND DISPOSITION OF RECORDS**

~~Six (6)~~Except as otherwise required by the United States Code, the UST, or other applicable law,  
six months after the filing of the trustee's final account, the entry of an order dismissing a Chapter 11 case following the sale of substantially all assets, or the entry of a final decree in a liquidating Chapter 11 case, the trustee or the ~~d~~Debtor may destroy or otherwise dispose of the books and records of the ~~d~~Debtor in the trustee's or the ~~d~~Debtor's possession, after advising the ~~d~~Debtor, ~~the debtor's attorney~~, taxing agencies, counsel for any committee, and any other entity designated by the Court, unless an earlier disposition is authorized by the Court after notice and a hearing.

Comments

This provision has been part of the local rules for years. The Committee recommends adding the qualifying opening clause, because changes to the Code have added new requirements concerning records in health care provider cases, for example. The new language also reminds those holding the records that other reasons for retaining records may exist, such as tax regulations, and the rule is not intended to bless disposal of the records in contravention of those laws.

**B-2016-1. APPLICATIONS FOR COMPENSATION FOR SERVICES  
RENDERED AND REIMBURSEMENT OF EXPENSES**

(a) Generally

Applications for compensation and reimbursement of expenses shall comply with the national fee guidelines promulgated on March 22, 1995, by the Executive Office for ~~USTs~~ United States Trustee pursuant to 28 U.S.C. § 586(a)(3)(A)(~~h~~) and the Policy of the ~~UST~~ United States Trustee for Region 10 for Implementation of Fee Guidelines dated

January 30, 1997, including any amendments. Applications for compensation and reimbursement of expenses shall be filed separately for the trustee and each professional.

(b) Chapter 13 Cases

The following are guidelines for the circumstances under which the Court will, as part of the Chapter 13 plan confirmation process, approve fees of attorneys representing a Chapter 13 ~~debtors~~ Debtor (“Counsel”). ~~These guidelines do not preclude the filing of motions to reinstate, in which instance fees would be payable directly to the debtor’s counsel.~~ Counsel shall file a proof of claim both for fees awarded pursuant to these guidelines and for fees awarded after application.

~~An attorney~~ Counsel may decline to seek approval of compensation pursuant to these guidelines. If ~~an attorney~~ Counsel so declines, his or her compensation shall be disclosed, reviewed, and approved in accordance with applicable authority including, without limitation, 11 U.S.C. §§ 329 and 330 and Fed.R.Bankr.P. 2002, 2016 and 2017. This authority requires, at a minimum, that payments on account of post petition services be held in trust until the Court approves the fees and expenses of the attorney.

Alternatively, ~~attorneys~~ Counsel may have ~~their~~ fees approved and paid as part of the Chapter 13 plan confirmation process if they comply with the following guidelines.

- (1) Counsel may seek approval for fees up to the amounts set forth in section (2) without filing a detailed application if:
  - (A) Counsel has filed an executed copy of the “Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys,” available ~~at~~ [www.insb.uscourts.gov](http://www.insb.uscourts.gov) on the Court’s website.
  - (B) No objection to the requested fees has been raised.
  - (C) A proof of claim has been filed with the Court by ~~the attorney~~ Counsel and served upon the trustee.
- (2) The maximum fee which can be approved through the procedure described in section (1) is ~~\$3,500.00~~ set by general order.
- (3) If ~~e~~Counsel does not wish to obtain approval of fees in accordance with these guidelines, ~~or~~ if an executed copy of the “Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys” is not filed, ~~or~~ if ~~e~~Counsel requests fees in excess of the amounts in section (2), or if there is an objection to use of these guidelines, fees will not be automatically approved upon plan confirmation pursuant to these guidelines. In such cases, ~~e~~Counsel must deposit all advance payment of post petition fees in trust, must apply for all fees, and shall comply with 11 U.S.C. §§ 329 and 330 and Fed.R.Bankr.P. 2002, 2016 and 2017.

- (4) If ~~c~~Counsel has filed an executed copy of the “Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys,” but the ~~initial~~ maximum fee in (b)(2) above is not sufficient to fully compensate counsel for the legal services rendered in the case, ~~the attorney~~ Counsel may apply for additional fees.
- (5) Except for pre-petition retainers, all fees shall be paid through the plan unless otherwise ordered. Absent Court authorization, ~~the attorney~~ Counsel may not receive fees directly from the ~~d~~Debtor other than the pre-petition retainer. After plan confirmation, the ~~Chapter 13~~ trustee shall pay ~~the attorney~~ Counsel until the fee is paid in full.
- (6) If ~~an attorney~~ Counsel has elected to be compensated pursuant to these guidelines but the case is converted or dismissed prior to confirmation of a plan, absent contrary orders, the trustee shall pay to the attorney Counsel, to the extent funds are available and subject to the trustee’s percentage fee, an administrative claim equal to 50% of the unpaid fee balance if a properly documented fee claim (for the entire fee balance) has been filed by ~~the attorney~~ Counsel and served upon the trustee. Under appropriate circumstances, ~~an attorney~~ Counsel may file a motion (within ~~ten [10]~~ fourteen [14] days of the dismissal or conversion) for allowance and payment of additional fees. ~~The attorney~~ Counsel shall not collect, receive, or demand additional fees from the ~~d~~Debtor for work already performed unless authorized by the Court, even after dismissal.
- (7) On its own motion or the motion of any party in interest at any time prior to entry of a final decree, the Court may order a hearing to review any fee paid or to be paid.

### Comments

Minor proposed revisions are (1) clarification that fee applications must be filed separately - joining more than one professional in an application creates tracking problems for the Clerk; and (2) a clarification that the fees paid out to counsel prior to confirmation in a Chapter 13 case are subject to the trustee’s fee. In addition, the amount of the presumptively reasonable fee for a Chapter 13 case is moved to a general order, as a general order is easier to alter than this local rule.

The Committee eliminated the sentence in subparagraph (b) that gave express authority for additional fees to Chapter 13 counsel, above the standard ‘no look’ fee, when a motion for relief from dismissal order is filed. The Committee divided over whether such motions should be considered part of the standard fee. Counsel is free to file a fee application seeking compensation for that work, and at that time the Court and interested parties can consider whether fees should be awarded above the standard amount. Other changes are for clarity.

### Changes Made After Comment Period

Edited time period in (b)(6) to comply to uniform numbering.

## B-2081-2. PREPACKAGED CHAPTER 11 CASES

“Prepackaged” Chapter 11 cases are governed by General Order ~~3-11~~ 03-11, as it may be subsequently amended or superseded.

### Comments

The Committee recommends that the Rule be retained as written. General Order 03-11 incorporates the prepackaged Chapter 11 case procedures used in the Southern District of New York at the time the general order was adopted. Comparison of the most recent ‘prepack’ procedures in SDNY to that order revealed few substantive differences. Outlining terms in a general order rather than a local rule gives the Court flexibility to make changes.

## B-3001-1. PROOF OF CLAIM

### (a) Method of Filing

A Proof of Claims may be filed ~~conventionally~~ non-electronically or electronically and shall substantially conform to Official Form B10 available on the Court’s website. Entities which are registered users of CM/ECF ~~must~~ shall file claims electronically.

### (b) Copies

Any entity filing a proof of claim ~~conventionally shall file a copy of the original proof of claim and serve a copy including any attachments on the trustee, the debtor’s counsel, or debtor, if pro se. All claims will be imaged (scanned). Any entity that wishes to receive a file-marked copy of the claim must provide the Clerk with a self-addressed, postage paid envelope. Copies of claims that the Clerk is unable to return will be recycled. Claimant shall retain the original proof of claim with any attachments and shall provide additional information as may be required by the Court or case trustee~~ non-electronically shall comply with S.D. Ind. B-5005-1(c).

### (c) Redaction of Personal Identifiers

Any claimant ~~should~~ shall redact, on the proof of claim and any attached documents filed with the Clerk ~~all but the last four digits of the debtor’s social security number. The claimant must provide at least the last four numbers of any account number assigned the debtor, all personal identifiers as required by Fed.R.Bankr.P. 9037.~~

(d) Wage Claimant

~~Any entity filing a A proof of claim for wages must provide a full social security number or salary shall include only the last four digits of the claimant's SSN or ITIN. The claimant shall provide the trustee or Debtor-in-possession the full SSN or ITIN and a telephone number directly to the trustee, in addition to filing a.~~

(e) Summary in Lieu of Supporting Documents

When supporting documentation is voluminous, a claimant may attach a summary to the proof of claim. However, the claimant shall make all documents available to the Debtor, trustee or UST upon request.

Comments

A reference to service of the proof of claim in subparagraph (b) has been dropped. The subparagraph is also edited to reflect the non-electronic filer's responsibility to retain an originally executed proof of claim form - by reference to B-5005-1(c). Subparagraph (c) is amended to refer claimants to Fed.R.Bankr.P. 9037, which requires redaction of personal identifiers. Subparagraph (d) is amended to clarify preferred practice as to wage and salary claims. Subparagraph (e) is new, and allows a claimant to attach a summary. Earlier versions of the proof of claim form permitted use of summaries. The current version of the form contains no reference to the option of providing a summary, but commentary to the form does not explain why the option was dropped. The Committee believes use of a summary does not run afoul of the Code or Fed.R.Bankr.P. 3001, so long as the claimant is prepared to provide originals if asked.

**B-3010-1. SMALL DIVIDENDS AND PAYMENTS**

Trustees in Chapters 7, 12, and 13 cases are authorized to distribute dividends and payments to creditors in any amount, and need not hold such funds or deposit them with the Court.

Comments

A new rule, intended to bless distribution of amounts that would otherwise be deposited with the Clerk, or in Chapter 13 cases, held until the amount to distribute exceeds \$15.

**B-3011-1. UNCLAIMED FUNDS.**

Applications for payment of unclaimed funds shall comply with instructions from and be submitted on forms made available by the Clerk.

### Changes Made After Comment Period

This rule was not originally proposed by the Committee. However, most Courts have a local rule on unclaimed funds procedures. Practice here has been to let Clerk set terms and conditions (as is the practice elsewhere). Rule establishes authority for the practice. (Forms are available on request. Forms are under revision, and will become available on the Court's Internet site thereafter.)

## **B-3015-1. FILING OF CHAPTER 13 PLAN**

### (a) Form of Plan

Chapter 13 plans and amended plans shall use the applicable Model Plan form approved by the Court. -The Model Plan is available at [www.insb.uscourts.gov](http://www.insb.uscourts.gov) on the Court's website.

### (b) Extension of Time to File Plan

~~A~~ motions to extend the time to file a Chapter 13 plan must be filed within ~~fifteen (15)~~ fourteen (14) days after the commencement of the case.

### ~~(c) Granting of Motion to Extend Time to File Plan~~

~~If the Court grants the motion to extend time to file a Chapter 13 plan, the debtor shall forthwith notify the trustee~~

### Comments

The Committee proposes adding the phrase 'and amended plans' to subparagraph (a) and then eliminating Rule B-3015-2. The word "applicable" was added to stress that the proper model plan depends on the filing date. Subparagraph (c), requiring notice to the trustee when the Court extends the time for filing a plan, is also dropped as electronic notice is provided.

### Changes Made After Comment Period

Minor edit to last paragraph, changing "Motions" to "A motion".

## **~~B-3015-2. AMENDMENTS TO CHAPTER 13 PLAN~~**

~~Any amended plan shall use the Model Plan form approved by the Court. The Model Plan is available at [www.insb.uscourts.gov](http://www.insb.uscourts.gov).~~

[deleted]

Comments

Rule is no longer needed as use of model plan for amended plans now included in 3015-1.

**B-3015-3. PRE-CONFIRMATION PAYMENTS AND CONFIRMATION HEARINGS.**

**(a) Pre-confirmation Payments as Adequate Protection**

For all cases filed on or after October 17, 2005, “adequate protection” under 11 U.S.C. § 1326(a)(1)(C) shall be paid directly to the trustee, as a portion of the payment made under 11 U.S.C. § 1326(a)(1), in an amount equal to one percent (1%) of the secured creditor’s allowed secured claim. Such amount shall be presumed to constitute adequate protection although that presumption may be rebutted. The trustee shall disburse adequate protection payments to the secured creditor as soon as practicable after receiving them from the Debtor. All adequate protection payments shall be subject to the trustee’s percentage fee as set by the UST.

**(b) Confirmation Hearings**

Consistent with 11 U.S.C. § 1324(b), absent a contrary order or objection, the Court finds that it is in the best interests of creditors and the bankruptcy estate to hold a confirmation hearing, in cases filed on or after October 17, 2005, prior to twenty-one (21) days after the 11 U.S.C. § 341(a) meeting of creditors.

Comments

General Orders 05-0004 and 05-0005, passed prior to BAPCPA, incorporated here. The last sentence of subparagraph (a) has been changed from the general order to provide that “all adequate protection payments” (rather than “such disbursements”) are subject to the trustee’s percentage fee.

**~~B-3016-1. FILING OF PLAN AND DISCLOSURE STATEMENT IN CHAPTER 9 MUNICIPALITY AND CHAPTER 11 REORGANIZATION CASES~~**

~~Unless otherwise specifically ordered in a Chapter 11 case, the proponent of a plan shall:~~



- (a) ~~if filed conventionally, file with the Clerk an original and one copy of the plan and the disclosure statement;~~
- (b) ~~serve a copy of the proposed plan and disclosure statement on the attorneys for any committee, the Service List, any party in interest who requests a copy, and upon the debtor and the debtor's attorney if the debtor is not the proponent;~~
- (c) ~~file with the Clerk a certificate of service in compliance with S.D.Ind. B-9013-2.~~

[deleted]

#### Comments

The Committee determined that the rule added nothing to the filing and distribution process - prior to the disclosure statement's approval - than what was required by the national rules except service on the Service List. Parties on that list who are interested in the case will likely be represented by counsel who will have taken necessary steps to receive electronic notice of and access to all filed documents including the proposed disclosure statement. All parties in the case will receive notice of any hearing on the approval of the disclosure statement and can request a copy if not received electronically. Therefore, the rule is not necessary.

### **~~B-3017-1. RESPONSIBILITY TO PROVIDE PLAN PACKET~~**

~~Upon the approval of the disclosure statement, unless otherwise ordered by the Court, the plan proponent shall serve copies of the plan, the disclosure statement, and ballot(s) on all creditors and parties in interest, along with the notice of the hearing on confirmation. The plan proponent shall file within five (5) days after the distribution a certificate of service in compliance with S.D.Ind. B-9013-2.~~

[deleted]

#### Comments

The rule has been made part of B-3018-1.

### **B-3017- 2. CONSIDERATION OF DISCLOSURE STATEMENTS IN SMALL BUSINESS CASES AND CONFIRMATION DEADLINES**

- (a) Expedited Processing of Disclosure Statement

If the proponent of a plan in a small business case would like the Court to:

- (1) determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;
- (2) approve a disclosure statement submitted on an approved official form; or
- (3) conditionally approve a disclosure statement subject to final approval at a hearing where the Court will also consider confirmation of the proposed plan.

the proponent shall file a notice at the same time as the proposed plan or disclosure statement is filed. Such notice shall state, with particularity, why a separate disclosure statement ~~may be dispensed with~~ is not needed, why a separate hearing to consider the adequacy of a disclosure statement is not necessary, or why the filing of the plan should be deferred. A sample notice form is available on the Court's website.

(b) Absence of Notice Results in Hearing

Absent a notice submitted in accordance with subparagraph (a), the Court will schedule the ~~matter~~ case for such proceedings as it deems appropriate.

(c) Deadlines

At any hearing where the Court is to consider the adequacy of a proposed disclosure statement the Court may also, either on its own initiative or at the request of a party in interest, consider whether any applicable deadline for confirming a proposed plan should be extended.

Comments

The proposal is a variation on a rule adopted by the Bankruptcy Court for the Northern District of Indiana. The Northern District requires a motion, but the Committee believes a notice is sufficient because that notice serves the purpose of clarifying the Debtor's intent.

Changes Made After Comment Period

In (a)(3), made a style change, and added note that a form is available. In (b) changed "matter" to "case" to avoid confusion.

**B-3018-1. BALLOTS; VOTING ON PLAN - CHAPTER 11**

(a) Distribution of Plan

Upon the approval or conditional approval of the disclosure statement, unless otherwise ordered by the Court, within seven (7) days the party filing the plan (the "Plan Proponent") shall serve copies of the plan, the disclosure statement (unless none is required under 11 U.S.C. § 1125(f)(1)), and ballot(s) on all creditors and parties in interest, along with the notice of the hearing on confirmation. The Plan Proponent shall file within ~~seven (7)~~ fourteen (14) days after the distribution approval or conditional approval of the disclosure statement a certificate of service in compliance with S.D. Ind. B-9013-2.

(a**b**) Submission of Ballots and Balloting Report

(1) Delivery and Retention of Ballots. Except as otherwise ordered and as provided in S.D. Ind. B-1007-2, all ballots shall be delivered to the pPlan pProponent. Any original ballots received by the Clerk shall be forwarded to the pPlan pProponent. The pPlan pProponent shall establish an appropriate method for noting the date the ballot was received. Unless otherwise ordered by the pCourt, the Plan pProponent shall retain copies of the ballots in accordance with the Court's Administrative Procedures for Electronic Filing in the Case Management/Electronic Electronic Case Filing System Administrative Policies and Procedures Manual.

(2) Tabulation; Report and Certification. The pPlan pProponent shall tabulate the ballots and shall file the prepare a balloting report with the Court three (3) days before the confirmation hearing. The tabulation shall list, for each class, the total number of claims voting, total dollar amount of claims accepting, and percentages of claims voting that accept the plan. The report shall also indicate, for each class, whether it is impaired or unimpaired and whether or not the requisite vote has been attained in each class. A sample report form is available at [www.insb.uscourts.gov](http://www.insb.uscourts.gov) (Appendix, p. A3) on the Court's website. The balloting report shall be certified by the Plan Proponent. A sample certification form is available on the Court's website.

(3) Filing and Service. The certification and the balloting report shall be filed with the Court at least three (3) days before the confirmation hearing. The balloting report shall be certified by the pPlan pProponent. A sample certification form is available at [www.insb.uscourts.gov](http://www.insb.uscourts.gov) (Appendix, p. A4) on the Court's website. Copies of the report shall be served on the UST, the Service List, and parties filing objections to the plan. The tabulation shall list, for each class, the total number of claims voting, total dollar amount of claims accepting, and percentages of claims voting that accept the plan. It The report shall also indicate, for each class, whether it is impaired or unimpaired and whether or not the requisite vote has been attained in each class.

(bc) Form of Ballot

~~T~~Unless a different ballot form has been approved by the Court, the Plan Proponent shall use the form of a ballot ~~approved by~~ available on the Court's website, ~~and available at~~ www.insb.uscourts.gov (Appendix, p. A5) ~~will~~ The ballot shall be distributed to creditors, shall include the address of the ~~p~~Plan ~~p~~Proponent or the party designated to receive ballots, and shall indicate that ballots should be received no later than the deadline established by order of the Court.

(cd) Rules for Tabulating Ballots

In tabulating the ballots, the following rules shall apply:

- (1) Ballots that are not signed will not be counted either as an acceptance or rejection.
- (2) Where the amount shown as owed on the ballot differs from the schedules ~~and, the~~ amount shown on the schedules or, if a proof of claim has been filed and allowed or deemed allowed, the amount shown on the proof of claim will be used for the purpose of determining the amount voting unless the Court orders otherwise.
- (3) ~~B~~Unless the Court orders otherwise, ballots that do not show a choice of either acceptance or rejection will not be counted either as an acceptance or rejection.
- (4) ~~B~~Unless the Court orders otherwise, ballots that are received after the last date set for filing ballots will not be counted as either an acceptance or rejection, ~~unless leave of the Court is granted.~~

Comments

Subparagraph (a) is new, and was previously B-3017-1. The original language of that rule was modified to address 11 U.S.C. § 1125(f)(1), which was added to the Code by BAPCPA. Section 1125(f)(1) states that the Court may excuse a Plan Proponent in a small business case from filing a separate disclosure statement if the plan provides adequate information.

Subparagraphs (b) through (d), the original Rule, were previously amended in May 2007. The Committee recommends minor changes to (d). That subparagraph now provides in (2) that the amount of the creditor's claim is set by the schedules or by an allowed claim. The Committee presumes that a claim which has not been objected to is "allowed." Subparagraphs (d)(2) through (4) permit changes to the terms of the Rule by separate Court order. In some cases, the plan process is controlled by an order that establishes all aspects of balloting and tabulation procedures.

Changes Made After Comment Period

Subparagraph (a) edited to set corrected time tables for distribution of plan and disclosure statement, and filing of certificate of service. Subparagraph (b) edited to make clear that certification and ballot report are filed together. Also edited to ensure that certification distributed along with report. Divided into additional subparagraphs for ease of reading.

## **B-3022-1. FINAL DECREE IN CHAPTER 11 CASES WHERE DEBTOR IS NOT AN INDIVIDUAL**

### ~~(a) — Definition of “Fully Administered”~~

~~For the purposes of Fed.R.Bankr.P. 3022, an estate will be considered “fully administered” when the order confirming the plan has become final, any deposits required by the plan have been distributed, payments under the plan have commenced, all motions, contested matters, and adversary proceedings have been resolved, and the plan has been otherwise “substantially consummated” as that term is defined in 11 U.S.C. § 1101(2). Payments required under the confirmed plan do not have to be completed for the estate to be considered “fully administered.”~~

### ~~(b) — Presumption of Full Administration~~

~~Unless the confirmation order or another order of the Court provides otherwise, a case shall be presumed to be fully administered no later than six (6) months after the date of confirmation. If a case is fully administered, and the docket reflects no pending matters, the Court may order the plan proponent to file an application for a final decree.~~

### ~~(c) — Contents of Application for Final Decree~~

~~After the estate has been fully administered and no pending matters remain, the pPlan pProponent or other entity administering the confirmed plan shall file an application for a final decree. The application shall provide the total amount paid to all classes, be accompanied by a final quarterly or monthly financial report pursuant to S.D. Ind. B-2015-1 that includes the percentage paid or proposed to be paid to general unsecured creditors in the plan, and any fees paid to professionals employed pursuant to 11 U.S.C. §§ 327 and 330. The application shall be accompanied by a final report.~~

### Comments

The Committee recommends an overhaul of this rule. In its current form, the rule attempts to establish when it is proper to request a final decree - a legal determination that should be decided by the Court. The new rule would establish the procedure for obtaining a final decree so that the case can be

closed. The Clerk needs the information about percentage paid to general unsecured creditors for statistical reporting requirements.

## **B-3022-2. FINAL DECREE IN CHAPTER 11 CASES WHERE DEBTOR IS AN INDIVIDUAL**

### **(a) Report in Addition to Contents of Application for Final Decree**

~~After the debtor has completed the payments under the plan, the debtor shall file an~~ If the Debtor in a Chapter 11 case is an individual, and has completed all plan payments, then the Debtor shall file an application for final decree. With the application for final decree. ~~The application shall provide the total amount paid to all classes, the percentage, the Debtor or the Plan Proponent shall file a final quarterly or monthly financial report pursuant to S.D. Ind. B-2015-1 that includes the percentage paid or proposed to be~~ paid to general unsecured creditors in the plan, ~~and any fees paid to professionals employed pursuant to 11 U.S.C. §§ 327 and 330.~~ If the ~~d~~Debtor is otherwise eligible, the Court shall issue a discharge as soon as practicable ~~after the application is filed.~~

### **(b) Request for Discharge under 11 U.S.C. § 1141(d)(5)(B)**

If a discharge is sought under 11 U.S.C. § 1141(d)(5)(B), the ~~d~~Debtor shall request entry of discharge by filing a motion for discharge, which shall be a contested matter governed by Fed.R.Bankr.P. 9014. If the motion is granted, and if the Debtor is otherwise eligible, the Clerk shall issue the discharge and the final decree, and close the case.

### **(c) Closing Case Before Plan Payments Completed.** If the Debtor proposes to close the case before plan payments have been completed, and intends to reopen the case after plan completion to obtain a discharge, then the Debtor shall file a motion to close the case and include in that motion a statement of the debtor's intent to reopen. If such documentation is provided, the Clerk shall not issue the Notice of No Discharge as required by Fed.R.Bankr.P. 4006 or the final decree at the time the case is closed. Upon the filing of a motion to reopen, the Debtor shall be required to pay any fees due for reopening the case. After reopening, the Debtor shall file the Application for Final Decree and supporting documentation as required in subparagraph (a).

## Comments

The Committee recommends changes similar to those proposed for non-individual Chapter 11 cases, so that the rule is not establishing the legal requirements that must be met before a case can receive a final decree and be closed.

### Changes Made After Comment Period

Changes address emerging trend of seeking closing with intent to reopen later to receive discharge. First two subparagraphs edited to make clear the type of pleading to be filed. In (a) also dropped concept of reporting on percentages “to be paid” to unsecured creditors as payments should be completed before the final decree is sought. New subparagraph (c) provides an opportunity for individual debtors to propose to close their Chapter 11 cases after issues are resolved but before plan payments have been completed. To minimize confusion among creditors, the Clerk will not issue Notice of No Discharge or the final decree when the debtor’s intent to reopen is clear. The Rule is silent as to review for completion of the financial management course as that course is only required under 11 U.S.C. §1141(d)(3), when the debtor liquidates all or substantially all of the debtor’s property and does not stay in business. The Clerk is unable to determine when this requirement will apply, and so defers to parties in the case to raise any questions as to the debtor’s failure to complete a financial management course. The rule is also silent as to §1141(d)(5)(C), which references §522(q). It is anticipated that parties would raise any issues under that subsection.

#### **B-4001-1. MOTIONS FOR RELIEF FROM STAY AND MOTIONS TO EXTEND OR IMPOSE THE STAY**

##### **(a) Relief from Stay or Co-debtor Stay**

##### **(a) Contents of Motion**

A motion for relief from the automatic stay ~~shall state~~ or relief from the stay as to a co-debtor pursuant to 11 U.S.C. §1301 shall include the following information to the extent applicable:

- (A) a description of the property as to which stay relief is sought;**
- (B) the amount of principal and interest due as of the date of the motion; ~~the date and amount of the last payment received;~~**  
**and contain a:**
- (C) documents upon which the movant relies to establish its lien or security interest (or incorporate by reference the movant’s proof of claim if documentation attached);**
- (D) evidence of perfection of the movant’s lien or security interest (or incorporate by reference the movant’s proof of claim if documentation attached);**

- (E) if the case is pending under Chapter 13 and a post-petition default is alleged, a post-petition payment history ~~sufficient to establish any alleged default.~~
- (F) if the motion seeks relief from the co-debtor stay, the name of the co-debtor.

A sample form motion is available at [www.insb.uscourts.gov](http://www.insb.uscourts.gov) on the Court's website. The movant may include in the motion a waiver of the 30-day hearing requirement in 11 U.S.C. § 362(e), and shall note that waiver by including in the caption, the statement, “with 30-day waiver.” The motion may be combined with the notice required by subparagraph (a)(2).

(b2) Notice; Disposition

(A) Chapters 7, 12, and 13

In cases pending under any chapter except Chapter 11, Nnotice of the motion shall be served by the movant on the ~~d~~Debtor, parties that have entered an appearance, ~~creditors~~, any trustee, and the UST, except as otherwise provided by S.D.Ind. B-2002-1(b). If the motion also seeks abandonment, notice must be sent to all creditors and parties in interest. The notice shall allow at least ~~fifteen~~ fourteen (~~15~~4) days from the date of service to file objections. Along with the notice, the moving party shall file a copy of the motion and a certificate of service listing the name and address of each entity served; and the date and manner of service. A sample notice is available at [www.insb.uscourts.gov](http://www.insb.uscourts.gov) the Court's website. If no proper response to the motion is filed; the Court may grant relief from the stay without further notice or hearing. At any hearing on the motion; the ~~d~~Debtor or ~~objector~~ objecting party has the burden of establishing any payment alleged to have been made but not set forth in the payment history.

(B) Chapter 11

In cases pending under Chapter 11, notice of the motion shall be served by the movant on the Debtor, parties that have entered an appearance, any creditors committee or if no committee has been appointed, the twenty largest unsecured creditors, any trustee, and the UST, except as otherwise provided by S.D. Ind. B-2002-1(b). If the motion also seeks abandonment, notice must be sent to all creditors and parties in interest. Notice of the motion shall be issued by the Clerk, unless otherwise ordered by the Court or unless counsel for the movant contacts the Court, obtains a hearing date, and provides the notice according to subparagraph (A), above.



(b) Extend or Impose the Stay

(1) Motion Filed Ten Days or Less After Filing Date

- (A) The Motion will be set for hearing, and notice of that hearing and the deadline for objections will be issued by the Court.
- (B) If, by the deadline, the debtor has filed an affidavit with sufficient facts to support the motion and no objection has been filed, then the Court may, in its discretion, rule on the motion without hearing, conduct a telephonic hearing, or make such other arrangements as will be most efficient for the Court and the debtor, including but not limited to excusing the debtor from appearing in person.

(2) Motion Filed More than Ten Days After Filing Date

- (A) The movant shall contact the Courtroom Deputy for the Judge assigned to the case and obtain a hearing date.
- (B) The movant shall send notice of the Motion and the hearing to those creditors as to whom it is proposed that the stay be imposed or extended.
- (C) The movant shall file a certificate of service establishing such notice on or before the hearing date.
- (D) Debtor's attendance at the hearing may be required, even if no objection is filed.

Comments

Subparagraph (a)(1) clarifies the documentation required when a motion seeks relief from the stay as to secured property. The Court seeks sufficient information that the opposing party can make a reasonable determination as to the accuracy of allegations. The requirements added to the Rule are a description of any property upon which a lien is asserted; documents upon which the movant relies to establish its lien or security interest; and proof of perfection. The requirement of a payment history was narrowed to Chapter 13 cases where a post-petition default is alleged. Subparagraph (a)(2) captures the notice provisions from the current rule, but clarifies that when only relief from stay is sought notice need not be provided to all creditors..

Subparagraph (b) captures the Court's practice on motions to extend or impose the stay, as previously set forth in a general order.

## Changes Made After the Comment Period

Since rule is expanded to include motions for relief from the co-debtor stay, added requirement that any co-debtor be listed in the motion. Also made clear that motion and notice can be combined.

### **B-4001-2. MOTIONS TO USE CASH COLLATERAL AND FINANCING MOTIONS TO OBTAIN CREDIT**

#### (a) Contents of Motions to Use Cash Collateral

~~Except as provided herein, all cash collateral and financing requests under 11 U.S.C. §§ 363 and/or 364 (“Financing Motions”) shall be brought by motion filed pursuant to Fed.R.Bankr.P. 4001 and 9014.~~ In addition to the requirements of Fed.R.Bankr.P. 4001(b)(1)(B), motions to use cash collateral shall also comply with the requirements of Fed.R.Bankr.P. 4001(c)(1)(B) unless otherwise directed by the Court.

#### (b) Interim Relief

~~When Financing Motions are filed as First Day Motions, the Court may grant interim relief pending review by the interested parties of the proposed arrangements. Such interim relief is intended to avoid immediate and irreparable harm to the estate pending a final hearing. Absent extraordinary circumstances, the Court may not enter interim orders that include any of the provisions identified in (c) below.~~

#### (c) Other Provisions to Be Disclosed

~~All Financing Motions must recite whether the proposed form of order, stipulation, or loan agreement contains~~ In addition to the provisions listed in Fed.R.Bankr.P. 4001(b)(1)(B) and (c)(1)(B), any motion to use cash collateral or motion to obtain credit (collectively “Financing Motions”) must also disclose as a “material provision” any provision of the type indicated below and identify by page and paragraph the location of any such provision in the proposed form of order, stipulation, or loan agreement:

##### (1) Cross-Collateralization of Pre-Petition Debt

Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the pre-petition secured creditor, i.e., clauses that secure pre-petition debt by post-petition assets in which the secured creditor does not assert a valid, perfected security interest by virtue of its pre-petition security agreement or applicable non-bankruptcy law, and provisions that deem pre-petition secured debt to be post-petition debt or that use post-petition loans from a pre-petition secured lender to pay all or part of that lender’s pre-petition claim, other than as provided in 11 U.S.C. § 552(b);

~~(2)~~ — Validity of Claims and Release of Claims

~~Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection, or amount of the secured creditor's pre-petition lien or debt or that waive or release any or all claims against the secured creditor without first giving parties in interest at least ninety (90) days from the entry of the order to investigate such matters;~~

~~(3)~~ — Surcharge

~~Provisions that seek to waive the estate's rights under 11 U.S.C. § 506(c);~~

~~(4)~~2 — Professional Fee Provisions

Provisions that provide disparate treatment for the professionals retained by a creditors' committee from that provided for the professionals retained by the ~~d~~Debtor with respect to a professional fee carve-out (payment from a secured creditor's collateral);

~~(5)~~ — Liens on Avoidance Actions

~~Provisions that grant liens on the debtor's rights, claims and causes of action, or proceeds thereof, arising under Chapter 5 of Title 11, United States Code;~~

~~(6)~~ — Relief from Stay

~~Provisions that grant a creditor relief from the automatic stay without further order or hearing upon the breach of the cash collateral or financing order or agreement;~~

~~(7)~~3 — Priming of Existing Liens

Provisions that prime any secured lien; without the consent of the holder of that lien;

~~(8)~~4 — Loan Documentation Costs

Provisions that call for the payment of fees or costs by the ~~d~~Debtor; other than reasonable attorney's fees for loan documentation; and

~~(9)~~5 — Plan Restrictions

Provisions that limit ~~or~~, restrict, or otherwise affect the right terms of a debtor or any other party in interest to submit a proposed plan of reorganization, ~~or which would affect the terms of any such plan.~~

(d) Summary of Essential Terms

All Financing Motions must also set forth, unless good cause is shown, the total dollar amount requested, the dDebtor's proposed budget for the use of the funds, an estimate of the value of the collateral which secures the creditor's asserted interest, the maximum borrowing available on an interim and final basis, the borrowing conditions, interest rate, fees, costs or other expenses to be borne by the dDebtor, maturity, limitations on the use of the funds, events of default; and the protections afforded under 11 U.S.C. §§ 363 and 364.

(d) Interim Relief

When Financing Motions are filed as First Day Motions, the Court may grant interim relief pending review by the interested parties of the proposed arrangements. Such interim relief is intended to avoid immediate and irreparable harm to the estate pending a final hearing. Absent extraordinary circumstances, the Court may not enter interim orders that include any of the provisions identified in subparagraph (b), above, or any provision listed in Fed.R.Bankr.P. 4001(c)(1)(B)(ii)-(xi).

Comments

This rule was revised extensively to address the amendments to Fed.R.Bankr.P. 4001(b) and (c). The amended national rule now requires that motions for authority to use cash collateral and to obtain credit highlight certain “material provisions,” in much the same fashion that the current version of S.D.Ind. B-4001-2 does. The revised local rule was intended to capture the changes to the national rule but to retain the additional requirements that are contained in the current rule. In particular, the revised local rule (1) retains the requirement that cash collateral motions must disclose the same material provisions that must be disclosed in motions for authority to obtain credit; (2) lists additional material provisions that are not included in the national rule; and (3) emphasizes that the Court will not approve any of the material provisions listed in either the local or national rule on an interim basis absent extraordinary circumstances.

**4001-3 OBTAINING CREDIT IN CHAPTER 13 CASES**

(a) Dollar Limits

The Debtor may not incur non-emergency consumer debt in excess of up to one thousand dollars (\$1,000.00), including the refinancing of real property debt, without written approval of the trustee or order of the Court Non-emergency

consumer debt of more than one thousand dollars (\$1,000) requires the approval of the trustee or an order of the Court, under the procedure set forth herein in subparagraphs (b) through (d) of this Rule.

(b) Request Directed to Trustee

If the proposed debt is unsecured or to be secured by personal property, the Debtor shall first request approval to incur debt by written application to the trustee. Such request shall not be filed with the Clerk. If approved by the trustee, the Debtor may incur the debt in accordance with the terms and conditions approved by the trustee. If the trustee has not directed use of a specific form, the application shall include the following information:

- (1) a statement in support of the feasibility of the request;
- (2) a description of the item to be purchased or the collateral affected by the credit to be obtained;
- (3) a description of the interest held by any other entity in any collateral affected by the credit;
- (4) the reasons for which the Debtor has the need for the credit;
- (5) the terms of any financing involved, including the interest rate;
- (6) a description of any method or proposal by which the interest held by any other entity in the collateral affected by the credit may be protected; and
- (7) copies of all documents by which the interest of all entities in the collateral affected by the credit was created or perfected, or, if any of those documents are unavailable, the reason for the unavailability.

(c) Filing Approved Request with the Court

If the Debtor seeks an order from the Court on a request that has been approved by the trustee, the Debtor may file the approved request with the Court and provide an order.

(d) Motion Directed to Court

If the proposed debt is greater than \$1000 and is to be secured by real property or if Debtor's request under subparagraph (b) is not approved by the trustee, the Debtor may file a motion to incur such debt. The motion shall contain all of the

information required for the request by subparagraph (b) and, if applicable, a copy of the trustee's denial of the request, and be served on the trustee.

### Comments

This proposal is a variation of a rule from the Southern District of Ohio on the same topic. The Judges were interested in clarifying the trustee's role in approval of post-petition debt, and in establishing uniform practices in the District. After discussion with one trustee's counsel, the Judges opted to require that a request be made to the trustee for unsecured debt or debt secured by personalty, and a motion be filed with the Court if a mortgage is involved (or the application is denied). No Court order is contemplated if the trustee approves the request, based on counsel's report that personal property creditors do not expect an order - as contrasted with mortgage lenders. However, the option of obtaining an order is provided.

### Changes Made After the Comment Period

The rule reads better when handling of debts under \$1000 is stated positively, rather than negatively. As originally drafted, the rule left confusion about whether Court was blessing debts under \$1000 with no trustee or Court action. In last subparagraph, clarified that the motion should be served on the trustee.

## **B-4002-1. DEBTOR'S DUTIES**

### (a) Notice to Other Tribunals

Immediately upon the entry of an order for relief, the **dDebtor** shall give written notice to any Court or tribunal where an action is pending against the **dDebtor** and to the parties and counsel involved in that action. If an action is commenced subsequent to the date of the order for relief, the **dDebtor** shall give similar written notice to the Court or tribunal and to all parties and counsel involved.

### (b) Notice to Garnishing Creditor and Garnishee Defendants

Immediately upon the entry of an order for relief, the **dDebtor** shall give written notice to any creditor with a garnishment order, any garnishee defendant other than the **dDebtor's** employer, and to any creditor whom the **dDebtor** anticipates may seek a garnishment order.

### (c) Notice to Employer

If the **dDebtor** has authorized deductions from the **dDebtor's** employment compensation in repayment of an unsecured claim; or if the **dDebtor's** employment compensation is subject

to an involuntary garnishment, then upon the entry of an order for relief, the dDebtor shall notify the employer and the entity authorized to receive any voluntary deduction that such deduction shall cease as of the date of the entry of the order for relief. If the employer or the entity authorized to receive a voluntary deduction is notified orally, the dDebtor shall send to the employer, within three (3) days thereafter, a written notice which includes photocopies of the petition and that portion of the schedules listing the creditor receiving the deductions. If the dDebtor has authorized the deduction from the dDebtor's compensation for repayment of a secured claim which the dDebtor intends to reaffirm, or the withholding of income governed by 11 U.S.C. § 362(b)(19), or if the dDebtor's compensation is subject to garnishment for a debt not dischargeable pursuant to 11 U.S.C. § 523(a)(5), then the dDebtor may elect not to provide the notice required by this subsection.

(d) Production of Business Records

In Chapter 13 cases, if a dDebtor is engaged in business, as defined in 11 U.S.C. § 1304, the dDebtor must produce any documents concerning the business requested by the trustee at or before the meeting of creditors.

(e) Additional Documents Upon Request

In addition to the documents required by ~~Interim Bankruptcy Rule~~ Fed.R.Bankr.P. 4002, the dDebtor shall produce such other documents as the trustee or UST requests.

Comments

Rule recommended for retention as it presently exists, with deletion of reference to Interim Rule 4002.

## **B-4003-2. LIEN AVOIDANCE MOTIONS**

(a) Requirements

Any dDebtor seeking to avoid a lien pursuant to either 11 U.S.C. §§ 522(f) or 1322(b) shall file a separate written motion as to each alleged lien holder. The motion shall identify:

- (a) the lien to be avoided ~~and its amount;~~ its amount, and the date the debt that the lien secures was incurred;

- (2) the amount, listed separately, of all other liens on the property;-
- (3) if applicable, the amount of the impaired exemption; and
- (4) the value of the subject collateral.

Motions to avoid judicial liens shall also include the case number and the Court where the underlying judgment was entered, the date of the judgment, and list the common address of any real property affected by the lien. The motion may be combined with the notice required by subparagraph (c). A sample notice and motion are available at [www.insb.uscourts.gov](http://www.insb.uscourts.gov) on the Court's website.

(b) Nonpossessory, Nonpurchase Money Security Interests in Household Goods

Motions to avoid a nonpossessory, nonpurchase money security interest in household goods under 11 U.S.C. § 522(f)(1)(B) must, in addition to the requirements in paragraph (a), specifically identify the household goods that are subject to the security interest sought to be avoided, referring to the definition of “household goods” provided in 11 U.S.C. § 522(f)(4).

(c) Service and Notice

The ~~d~~Debtor shall serve the motion and notice thereof on the lien holder, ~~or on the attorney for the lien holder but only if such attorney has appeared in the bankruptcy case on behalf of the lien holder, and all other parties in interest.~~ in accordance with Fed.R.Bankr.P. 9014(b) and 7004. The notice shall allow at least ~~twenty (20)~~ twenty-one (21) days from the date of service to file objections.

(d) Filing and Certificate of Service ~~Notice~~

Along with the motion, the ~~d~~Debtor shall file with the Court a copy of the notice and a certificate of service in compliance with S.D.Ind. B-9013-2.

Comments

Committee proposes to add requirement that date lien arose be stated. Courts have experienced problems with efforts to avoid post-filing liens. Committee also recommends that reference to proper service in (c) be changed, as determination is a legal question for the Court. Sometimes service on an attorney who has appeared in the case may not be sufficient.

Changes Made After Comment Period



The rule is modified to permit a combined motion and notice. Subparagraph (c) is more correctly titled “Service and Notice” and then no further reference to “notice” is required in the title to subparagraph (d).

## **B-4004-1. DISCHARGE IN CHAPTER 13 CASES**

### **(a) Trustee’s Notice of Completion**

For all chapter 13 cases filed on or after October 17, 2005, the Chapter 13 trustee shall file a ~~n~~Notice of ~~c~~Chapter 13 Plan Completion ~~of the plan~~ after all payments have been received. ~~That notice of completion shall be in conformance with the Court’s form notice. Sample forms are available on the Court’s website.~~

### **(b) Debtor’s Required Pleadings**

Within thirty (30) days after the trustee files the notice of completion, the ~~d~~Debtor shall file a ~~m~~Motion for ~~e~~Entry of Chapter 13 ~~d~~Discharge and, ~~for each Debtor in a joint case, a separate certification of eligibility, in conformance with the Court’s forms. Each debtor must file a separate certification. Certification of Eligibility for Chapter 13 Discharge. Each Debtor in a joint case shall file a separate Certification. Sample forms~~ are available on the ~~Court’s website.~~

### **(c) Local Forms**

~~The notice of completion, the motion for entry of Chapter 13 discharge, and the certification of eligibility are available on the Bankruptcy Court’s website, www.insb.uscourts.gov . (Under “Bankruptcy Forms and Instructions,” consult the list of Local Forms and Instructions.)~~

### **(~~d~~c) Closing and Reopening**

If no motion for entry of chapter 13 discharge is filed, the case may be closed without entry of a discharge after filing of the trustee’s final report, or thirty (30) days after filing of the trustee’s notice of plan completion, whichever is later. If the motion for entry of chapter 13 discharge is filed after the case has been closed, the ~~d~~Debtor must also file a motion to reopen the case. A filing fee to reopen the case must be paid with the motion.

### **(d) Denial of Discharge**

If a notice of ineligibility for discharge has been filed by an interested party or a similar notice is placed on the docket by the Court, asserting that the Debtor is not eligible for a discharge because of 11 U.S.C. §1328(f), then the Court shall not issue a discharge to the

Debtor at the conclusion of the case, unless the Debtor has objected to the notice of ineligibility and the Court has determined that the notice is incorrect.

#### Comments

This new rule is General Order 06-0004, edited for clarity.

#### Changes Made After Comment Period

Subparagraph (a) clarified to eliminate possible confusion that only joint debtors have to file Certification.

National rules do not establish a procedure for determining that a debtor is not eligible for a discharge in a Chapter 13 because of a discharge in a prior filing. New subparagraph (d) establishes a procedure. Notice of ineligibility is usually filed early in the case. In the alternative, the Court may also enter prior filing information, and the debtor's ineligibility for a discharge, on the docket - and that docket text is sent to debtor's counsel or the debtor if pro se. With this procedure, debtor has until case closing to challenge any determination of ineligibility.

### **4004-2      OBTAINING DISCHARGE AFTER CASE CLOSED WITHOUT DISCHARGE FOR FAILURE TO FILE FINANCIAL MANAGEMENT REPORT**

A debtor may file a motion to reopen a case in order to ~~set aside~~ obtain a discharge after a Notice of No Discharge where the discharge was not entered solely because the debtor failed to file a statement regarding completion of a course in personal financial management pursuant to Fed.R.Bankr.P. 1007(b)(7) and (c). In order for the motion to reopen to be granted, the debtor must pay the fee due to reopen the case and, contemporaneously with the Motion to Reopen, file the required statement of completion using the appropriate Official Form B23.

#### Comment

This rule captures General Order 06-0003, with clarification that a filing fee is owed even when the case is reopened to file proof of the financial management course and obtain a discharge and that proof of completion must accompany the motion to reopen.

#### Changes Made After Comment Period

Use of 'set aside' felt to be misleading, as Court does not set aside notice of no discharge; merely enters discharge and gives notice of same.

## **B-5005-1. FILING OF PAPERS: GENERAL REQUIREMENTS**

### **(a) Method of Filing**

~~Except as provided by S.D. Ind. B-5005-4 and the Electronic Case Filing Administrative Policies and Procedures Manual (available on the Court's website), which requires electronic filing by attorneys and certain limited users,~~ the Court will accept for filing documents submitted, signed, or verified by electronic means consistent with the rules and procedures established by the Court. Filing of documents electronically in compliance with these rules and procedures shall constitute filing with the Court for purposes of Fed.R.Bankr.P. 5005: paper documents that comply with the Rules.

### **(b) Requirement of Form**

All petitions, pleadings; and other papers offered for filing shall meet the following requirements of form:

#### **(1) Legibility**

Papers shall be plainly and legibly typewritten, printed, or reproduced on one side of the paper only.

#### **(2) Caption: Official Forms**

The caption and form of all petitions, pleadings, schedules; and other papers shall be in substantial compliance with Fed.R.Bankr.P., official forms, or local rules the Federal Rules of Bankruptcy Procedure, Official Forms, or Local Rules for the Southern District of Indiana. Each paper or set of papers filed, ~~except petitions,~~ shall bear the name of the ~~d~~Debtor, ~~the case number,~~ and chapter of the case. Each paper other than the petition shall also have the case number.

#### **(3) Signature**

Every pleading, whether filed electronically or on paper, shall be signed. Any pleading lacking a signature shall be stricken from the record, if not corrected after notice to the filer.

### **(c) Return of Copies**

~~Any person who files a pleading or paper, including a claim, by mail and wishes to receive a file-marked copy by return mail must include with the paper or pleading a self-addressed, stamped envelope and sufficient copies of the pleading or paper therefor. Copies of pleadings and other papers that the Clerk is unable to return will be recycled.~~

(c) Filing Non-Electronically: Original And Copy Required

(1) Over the Counter

A party filing a document over the counter shall provide a signed original and a copy (or two originals). The file-marked original will be returned to the filer, and shall be retained by the filer as required by the Court's Electronic Case Filing Administrative Policies and Procedures Manual available on the Court's website.

(2) By Mail

For documents submitted by mail, the filer shall provide a signed original, a copy (or two originals), and a self-addressed, stamped envelope. A file-marked original will be returned to the filer and shall be retained by the filer as required by the Electronic Case Filing Administrative Policies and Procedures Manual, available on the Court's Website.

(3) Failure to Provide Copy or Self-Addressed, Stamped Envelope

A party who fails to provide a copy (or second original) or a self-addressed, stamped envelope for pleadings submitted by mail shall be presumed to have retained an original as required by the Electronic Case Filing Administrative Policies and Procedures Manual, (available on the Court's website). The Clerk shall not return the original to the filer. Documents that are not returned to the filer will be ~~recycled~~ discarded by the Clerk after scanning.

(d) ~~Service on UST~~

~~An attorney who certifies that a paper has been duly served on the UST either conventionally or electronically, or that an additional copy of a writing or paper has been provided to the Clerk for transmittal to the UST, shall be deemed to have verified for the purposes of Fed.R.Bankr.P. 5005(b) that the paper was transmitted.~~

Comments

Rule is significantly modified, but reflects actual practice and provides guidance as to all documents. Subparagraph (d) eliminated as unnecessary. Service on UST can be shown on certificate of service.

Changes Made After Comment Period

In last line, changed “recycled” to “discarded” - the term used elsewhere in the rules. (“Discarded” can include recycling, but rule should not bind Clerk as to method of disposition.)

### **B-5005-3. SIZE OF PAPERS.**

Papers submitted for filing shall be no larger than 8 ½" by 11" in size.

#### Comments

New rule, moving information from 5005-1 here to match uniform numbering system.

### **B-5005-4. ELECTRONIC FILING**

The Court ~~may adopt Administrative Procedures for Electronic Filing in the Case Management/Electronic Case Filing System (“CM/ECF”)~~ has adopted Electronic Case Filing Administrative Policies and Procedures to permit filing, signing, service, and verification of documents by electronic means. These Administrative Policies and Procedures, as described in the Manual, are incorporated into this Local Rule.

#### Comments

Rule revised slightly to make clear that ECF Administrative Policies and Procedures as described in the Manual can be enforced as a local rule.

### **B-5011-1. WITHDRAWAL OF REFERENCE**

#### **(a) Form of Request; Place of Filing**

A withdrawal of reference in whole or part shall be filed by motion ~~and filed timely with the Clerk.~~ In addition, all such motions shall clearly and conspicuously state that “relief is sought from a U.S. District Judge.”

#### ~~(b) Time for Filing~~

#### ~~(1) Adversary Proceeding~~

~~A motion to withdraw the reference of an adversary proceeding or any part of an adversary proceeding shall be served and filed on or before the date on which an answer, reply, or motion under Fed.R.Bankr.P. 7012 or 7015 is first due.~~

(2) — Contested Matter

~~A motion to withdraw the reference of a contested matter within a case shall be served and filed no later than the deadline for filing a response to the pleading which commenced the contested matter or, if no deadline has been set, two (2) days before any hearing on the pleading.~~

(cb) Stay

The filing of a motion to withdraw the reference does not stay the proceedings in the Bankruptcy Court. Fed.R.Bankr.P. 8005 governs requests for a stay pending decision on withdrawal of reference.

(dc) Designation of Record

The moving party shall serve and file, together with the motion to withdraw the reference, a designation of those portions of the record believed to be necessary or pertinent to the District Court's consideration of the motion. Within ~~ten (10)~~ fourteen (14) days after service of such designation of record, any other party may serve and file a designation of additional portions of the record. All ~~documents~~ documents shall be identified by document number as noted on the docket. If the record designated by any party includes a transcript of any proceeding, that party shall file a written request for the transcript and include with the request the fee for preparation of the transcript.

(ed) Responses to Motions to Withdraw Reference; Reply

Opposing parties shall file with the Clerk, and serve all parties to the matter, their written responses to the motion within ~~ten (10)~~ fourteen (14) days after being served a copy of the motion. The moving party may serve and file a reply within ~~ten (10)~~ fourteen (14) days after service of a response.

(fe) Transmittal of Record to District Court

When the record is complete, the Clerk of the Bankruptcy Court shall transmit to the Clerk of the District Court the motion and the portions of the record designated. After the opening of the docket in the District Court, documents pertaining to the matter under review by the District Court shall be filed with the Clerk of the District Court.

Comments

The Committee determined that an attempt to set a deadline for the filing of a motion to remove is not supported by statute. 28 U.S.C. §157(d) requires only a 'timely' motion. Therefore, current subparagraph (b) is dropped.

## **~~B-5073-1. PHOTOGRAPHY, RECORDING DEVICES, AND BROADCASTING~~**

~~S.D.Ind. L.R. 83.3 applies to the Court.~~

~~[deleted]~~

### Comments

Court policy has changed, and judges have opted for signage outside courtrooms reminding of restrictions.

## **B-5080-3. DEFERRAL OF FILING FEES DUE FROM TRUSTEE**

In an adversary proceeding, if the trustee certifies to the Clerk that the estate lacks the funds necessary to pay a filing fee, the Clerk shall defer the filing fee without Court order and enter the deferral on the docket. If the estate later receives funds sufficient to pay the deferred fees, the trustee shall pay the fee no later than the date the trustee makes distribution to creditors.

### Comments

No changes proposed.

## **B-6004-1. PROCEDURE FOR SALE OF ~~SUBSTANTIALLY ALL~~ ASSETS UNDER OUTSIDE THE ORDINARY COURSE PURSUANT TO 11 U.S.C. § 363 ~~WITHIN 60 DAYS OF FILING IN CHAPTER 11 CASES~~**

### (a) Motion to Sell

A motion to approve the sale of ~~substantially all~~ assets ~~within sixty (60) days of~~ outside the ~~filing of~~ ordinary course, pursuant to 11 U.S.C. § 363 (the “Motion to Sell”) shall include the following information, where applicable:

#### (1) Proceeds of Sale

If the ~~d~~Debtor has identified a prospective purchaser (a “Prospective Purchaser”), an estimate of the gross proceeds anticipated from the sale, an estimate of the net

proceeds coming to the estate, and an itemization of all expenses to be incurred in connection with the proposed sale.

(2) Sale Contingencies

A brief summary of all material contingencies to the sale agreement, together with a copy of the agreement, if available.

(3) Debt Structure of the Debtor

If schedules have not been filed by the ~~d~~Debtor, a summary of the ~~d~~Debtor's debt structure, including the amount of the ~~d~~Debtor's secured debt, priority claims, and general unsecured claims.

(4) Marketing of Assets

A description of the manner in which the assets were marketed for sale, and where there is an ~~an-identified-p~~Prospective ~~p~~Purchaser, a description of any other offers to purchase.

(5) Topping Fees and Break-up Fees

Any request for the approval of a topping fee or break-up fee provision shall be supported by a statement of the conditions under which the topping fee or break-up fee would be payable and the factual basis on which the seller determined the provision was reasonable. The request shall also disclose the identities of any other entity that expressed to the ~~d~~Debtor an interest in the purchase of all or a material portion of the assets to be sold within ninety (90) days prior to the filing of the sale motion, the offers made by them (if any), and the nature of the offer.

(6) Relationship of Buyer

Where there is ~~an-identified-prospective-purchaser~~ a Prospective Purchaser, a statement identifying the buyer and setting forth all of the known relationships between the buyer and its insiders and the ~~d~~Debtor and its insiders.

(7) Post Sale Relationship with the Debtor

Where there is ~~an-identified-prospective-purchaser~~ a Prospective Purchaser, a statement setting forth any relationship or connection the ~~d~~Debtor (including its insiders) will have with the buyer after the consummation of the sale, assuming it is approved.



(8) Creditors' Committee

If a creditors' committee, or its equivalent, existed pre-petition, the identity of the members of the committee and the companies with which they are affiliated and the identity of any counsel.

(9) Personally Identifiable Information

Disclose if the property to be sold contains personally identifiable information and, if so, state what measures will be taken to comply with 11 U.S.C. § 363(b)(1).

(b) Motion for Bid Procedures

If the Motion to Sell contemplates competitive bidding, a motion to establish bid procedures ("Motion for Bid Procedures") must be filed separately and on the same day as the Motion to Sell.

(1) Notice

The notice for the hearing on a motion for bid procedures must describe the proposed bidding procedures and must contain a deadline for filing objections. If there is an existing proposed purchase agreement, the moving party shall describe the terms of the sale proposed, when a copy of the actual agreement will be available, and from whom it may be obtained. The notice shall be served upon the Notice List and any Prospective Purchaser.

(2) Objections to Motion for Bid Procedures

Any objection to the Motion for Bid Procedures shall be served on all parties on the Service List; and, to the extent known, to the objecting party; and to any ~~purchasers or potential purchasers~~ Prospective Purchaser (or their counsel, ~~where if~~ applicable) ~~identified in the Motion to Sell, and to any party who requested a copy of the Motion for Bid Procedures~~. Where possible, the objection to Motion for Bid Procedures shall be served at least one day prior to the hearing on the Motion for Bid Procedures ~~and, where possible, shall be served by Expedited Service Option A~~. A ~~file-marked~~ copy of the objection shall be delivered or e-mailed to chambers at the time of filing.

(c) Hearing on Motion for Bid Procedures

A hearing on a Motion for Bid Procedures may be scheduled on an expedited basis pursuant to Fed.R.Bankr.P. 9006(c).

(cd) Hearing on Motion to Sell

If bid procedures are to be approved by the Court, the hearing on the Motion to Sell shall be scheduled, if practicable, no more than thirty (30) days following the Court's approval of bid procedures.

(d) Hearing on Motion for Bid Procedures

~~A hearing on a Motion for Bid Procedures may be scheduled on five (5) days notice, calculated pursuant to Fed.R.Bankr.P. 9006(a).~~

(e) Service of Motion to Sell and the Motion for Bid Procedures

The Motion to Sell and the Motion for Bid Procedures, if any, shall be delivered as soon as possible to all parties on the Service List, to any ~~purchasers or potential purchasers~~ Prospective Purchaser (or their counsel, where applicable) identified in the Motion to Sell, and to any party ~~requesting~~ that has requested a copy.

(f) Financial Ability to Close

Unless the Court orders otherwise, any purchaser pursuant to a Motion to Sell, or bidder pursuant to a Motion for Bid Procedures, must be prepared to demonstrate through an evidentiary hearing, its ability to consummate the transaction if it is the successful purchaser or bidder, along with evidence regarding any financial contingencies to closing the transaction.

Comments

This rule, which currently applies only to Chapter 11 sale motions filed in the first 60 days, has been expanded to all chapters and to motions to sell outside the ordinary course of business. For clarity, a purchaser identified in the sale motion is now defined as the "Prospective Purchaser." The Committee also revised the timing for a hearing on a motion to approve bid procedure by deleting the reference to "five days." Finally, subparagraph (a)(9) was added in light of 11 U.S.C. § 363(b)(1) to the extent it addresses "personally identifiable information."

## **B-6005-1. LIQUIDATORS/AUCTIONEERS AND APPRAISERS**

(a) Bond Required

All liquidators/auctioneers retained by a trustee or ~~debtor-in-possession~~ Debtor in any case who will come into possession or control of the assets or proceeds of assets of an estate shall either participate in the bond program administered by the UST or post a bond with the United States as obligee for the full value of the assets in the possession or control of the liquidator/auctioneer, unless otherwise ordered by the Court.

(b) Report of Sale

The liquidator/auctioneer shall file a report of sale within seven (7) days of any sale and transmit a copy of the report to the UST and to the case trustee or ~~debtor-in-possession~~ Debtor. The report must provide an itemized list of the property sold, the name of each purchaser, and the price received for each item or lot of inventory. If the Court authorizes the deduction of the liquidator/auctioneer's commission and costs of sale from the sale proceeds, the liquidator/auctioneer shall file with the report an affidavit or declaration listing the commission received and costs reimbursed.

(c) Remittance of Gross Proceeds

Unless otherwise ordered by the Court, all gross proceeds shall be remitted to the trustee or ~~debtor-in-possession~~ Debtor within ~~ten (10)~~ fourteen (14) days of the sale. Upon motion of any party in interest and for good cause shown, the Court may authorize the liquidator/auctioneer to submit net proceeds or to turn over to a secured creditor the net proceeds realized from the sale of that creditor's collateral.

(d) Validity of Checks

The validity of any checks or bank drafts accepted by the liquidator/auctioneer shall be the sole responsibility of the liquidator/auctioneer.

(e) Separate Escrow Account

If the liquidator/auctioneer does not make an immediate settlement with the trustee or ~~debtor-in-possession~~ Debtor in any case, and the proceeds of the property sold are \$50,000.00 or more, the auctioneer shall open a segregated escrow or ~~impress~~ trust account for deposit of the sale proceeds. This account shall be designated by the bankruptcy estate case name and shall require the co-signature of the trustee for any withdrawals. If the proceeds of the sale are less than \$50,000.00, the proceeds may be deposited in the auctioneer's trust or client fund account.

(f) Appraiser Serving as Liquidator/Auctioneer

No appraiser, agent, or employee of an appraiser who has been employed in a bankruptcy case may serve as the liquidator/auctioneer in that same case without the approval of the Court.

(g) Liquidator/Auctioneer Purchasing at Sale

No liquidator/auctioneer, or any agent or employee of a liquidator/auctioneer employed in a case may purchase an asset from the estate.

## Comments

The Committee recommends that the Rule remain as it currently exists, with the only changes as to time periods.

### Changes Made After Comment Period

In subparagraph (e), changed reference to “impress account” to “trust account.” (Believed that perhaps “impress” was intended to be “imprest” but language archaic so edit made.)

## **B-6007-1. ABANDONMENT OF PROPERTY**

### (a) Trustee’s Notice of Possible Assets and Abandonment

In Chapter 7 cases where the trustee files a notice of possible assets and abandonment, the Clerk shall give notice to all creditors and parties in interest of those assets which are not being abandoned by the trustee, **and of the proposed abandonment of all other assets.**

### (b) Trustee’s Notice of Abandonment

In Chapter 7 cases where the trustee files a notice of abandonment more than one day after filing a notice of possible assets, the trustee shall serve the notice on parties in interest and all creditors, except as otherwise provided in S.D.Ind. B-2002-1(b). The notice shall allow at least ~~fifteen (15)~~ **fourteen (14)** days from the date of service to file objections. Along with the notice, the trustee shall file a certificate of service in compliance with S.D.Ind. B-9013-2. A sample notice is available [at www.insb.uscourts.gov](http://www.insb.uscourts.gov) **on the Court’s website.**

### (c) Motion to Abandon Filed by Party in Interest

A motion to abandon filed by a party in interest shall be served on the ~~d~~**D**ebtor and parties in interest. Notice of the motion shall be served on the ~~d~~**D**ebtor, parties in interest, and all creditors, except as otherwise provided by S.D.Ind. B-2002-1(b). The notice shall allow at least ~~fifteen (15)~~ **fourteen (14)** days from the date of service to file objections. Along with the motion, the moving party shall file a copy of the notice and a certificate of service in compliance with S.D.Ind. B-9013-2. A sample notice is available [at www.insb.uscourts.gov](http://www.insb.uscourts.gov) **on the Court’s website.**

## Comments

Only proposed changes are as to time periods.

### Changes Made After Comment Period

Subparagraph (a) was determined to be unclear, as it did not capture actual practice: the Clerk gives notice of the assets the trustee intends to administer, and the fact all other assets are being abandoned.

## **B-6008-1. REDEMPTION OF PROPERTY**

### **(a) Service**

The ~~d~~Debtor shall serve ~~a~~the motion ~~to redeem~~ and notice thereof on the ~~subject lien holder(s), or on the attorney for the lien holder but only if such attorney has appeared in the bankruptcy case on behalf of the lien holder, and all other parties in interest.~~ lien holder, in accordance with Fed.R.Bankr.P. 9014(b) and 7004. The notice shall allow ~~twenty~~at least twenty-one (201) days from the date of service to file objections. ~~The motion and notice may be combined in one document.~~ A sample ~~combined motion and notice~~ is available ~~at [www.insb.uscourts.gov](http://www.insb.uscourts.gov) on the Court's website.~~

### **(b) Filing and Certificate of Service**

Along with the motion, the ~~d~~Debtor must file with the Court a copy of the notice and a certificate of service in compliance with S.D.Ind. B-9013-2.

#### Comments

Occasionally parties combine the motion and notice - which creates challenges for docketing, review, and tracking. Rule amended to require that notice be a separate document and to refer questions of proper service to the appropriate rules.

#### Changes Made After Comment Period

Edited to reflect decision to allow combined motions and notices.

## **B-7005-2. FILING OF DISCOVERY MATERIALS**

S.D.Ind. L.R. 26.2 applies in adversary proceedings, unless otherwise ordered by the Court.

#### Comments

The Committee recommends that the substance of S.D.Ind.L.R. 26.2 continue to apply to bankruptcy matters.

## B-7006-1. EXTENSIONS OF TIME

### (a) Initial Extensions

In every adversary proceeding pending in this Court, in which a party wishes to obtain an initial extension of time not exceeding thirty (30) days within which to file a responsive pleading or a response to a written request for discovery or request for admission, or response to a motion, the party shall contact counsel for the opposing party, or if the opposing party is not represented by counsel, the opposing party, and solicit that person's agreement to the extension. In the event that person does not object to the extension or cannot with due diligence be reached, the party requesting the extension shall file a notice with the Court reciting the lack of objection to the extension or the fact that the person could not with due diligence be reached. The notice shall state the original due date and the date to which the time is extended. No further filings with the Court nor action by the Court shall be required for the extension.

### (b) Other Extensions

Any other request for an extension of time, unless made in open Court or at a telephonic pre-trial conference, shall be made by written motion. ~~In the event~~ If the opposing counsel or *pro se* litigant objects to the request for extension, the party seeking the same shall recite in the motion the effort to obtain the agreement.

### ~~(c) — Any motion or notice filed pursuant to this rule shall state the original due date and the date to which the time is extended.~~

### Comments

This rule matches S.D. Ind. L.R. 6.1. The Committee recommends retention, with the addition of subparagraph headings. Original subparagraph (c) is most pertinent to initial extensions that do not require Court order and so is now incorporated into subparagraph (a). Committee also changed “nor” to “or” at end of subparagraph (a) and added clarifier “telephonic pretrial” in part (b).

### Changes Made After the Comment Period

In subparagraph (b), changed “In the event” to “If”.

## B-7007-1. FRBP 7012 MOTION PRACTICE ~~IN ADVERSARY PROCEEDINGS~~

S.D.Ind. L.R. 7.1 (a), (b) and (c), concerning motions ~~practice, length, form, and schedule of briefs, under Fed.R.Civ.P. 12,~~ applies in adversary proceedings, unless otherwise ordered by the Court.

#### Comments

S.D. Ind. L.R. 7.1 has been expanded to include subparagraphs (d)—on citations to authority; (e)—on attorneys’ conference on requests for attorney fees and sanctions; and (f)—on notice of settlement /resolution. The Committee believes these subparagraphs are not necessary for bankruptcy matters and recommends that they be excluded from applicability to adversary proceedings. The Committee also recommends minor clarification to the rule so that it is clear the briefing requirements of the District Court rule apply to motions under Fed.R.Bankr.P. 7012. The Committee also changed the title of the Rule so that its substance is more clear.

### **B-7016-1. PRE-TRIAL PROCEDURES IN ADVERSARY PROCEEDINGS**

#### (a) Use of Pre-Trial or Pre-Hearing Conferences

The Court may conduct a pre-trial or a pre-hearing conference in any adversary proceeding ~~or contested matter~~, at the Court’s discretion, upon notice to parties in interest.

#### (b) Applicability of S.D.Ind. L.R. 16.1

The Court may determine on its own motion or on the request of any party in interest which provisions of S.D.Ind. L.R. 16.1 shall apply to an adversary proceeding governed by Fed.R.Bankr.P. 7001, et seq.

#### (c) Telephonic Pre-Hearing or Pre-Trial Conference

No later than twenty-four (24) hours before the time scheduled for a pre-hearing or pre-trial conference, any party to the conference may request that the conference be conducted by telephone or that the party be allowed to participate by telephone. Such request may be made in writing or by telephone. At the time of the request, the requesting party shall advise the Court whether any other party to the conference has objected to the request. The request may be granted or denied at the sole discretion of the Court.

#### Comments

The Rule accurately captures current practice and the Committee supports its retention.

## **~~B-7024-2. NOTICE OF CLAIM OF UNCONSTITUTIONALITY~~**

~~S.D.Ind. L.R. 24.1 applies in adversary proceedings.~~

~~[deleted]~~

### Comments

The District Court deleted L.R. 24.1, concerning a claim of unconstitutionality, in light of new Fed.R.Civ.P. 5.1, which is incorporated into Fed.R.Bankr.P. 9005.1. Therefore, B-7024-2 is no longer necessary.

## **B-7026-1. DISCOVERY DISCLOSURES AND CONFERENCES**

Unless otherwise ordered by the Court, Fed.R.Civ.P. 26(a), concerning initial disclosures, and 26(f), concerning discovery conferences, do not apply in adversary proceedings.

### Comments

The requirements in Fed.R.Civ.P. 26(a) about required disclosures and 26(f) about conferences have not been imposed in this District as to bankruptcy matters. The Committee recommends that the Court adopt a rule clarifying local practice. Fed.R.Civ.P. 26 provides that the Court can by separate order excuse compliance with those requirements.

## **B-7026-~~1~~2. FORM OF CERTAIN DISCOVERY DOCUMENTS**

S.D.Ind. L.R. 26.1 applies in adversary proceedings, unless otherwise ordered by the Court.

### Comments

The Committee recommends that the Court continue to follow the District Court's practice on form of discovery documents and maintain this rule as currently written.

The rule has been renumbered so that 7026-1 can refer to the proposed new rule concerning Fed.R.Bankr.P. 7026.



## **B-7027-1. DEPOSITIONS, REQUESTS FOR ADMISSIONS, AND EXAMINATIONS IN ADVERSARY PROCEEDINGS**

S.D.Ind. L.R. 30.1, 36.1, 37.1, and 37.3 apply in adversary proceedings, unless otherwise ordered by the Court.

### Comments

The Committee recommends that the rule be retained as written.

## **B-7041-1. DISMISSAL ~~OF ADVERSARY PROCEEDINGS~~ FOR FAILURE TO PROSECUTE**

S.D.Ind. L.R. 41.1 applies to adversary proceedings.

### Comments

The Committee recommends that the rule be retained as written, with a change to the title for better clarity.

## **B-7041-2. ~~OBJECTIONS~~ COMPLAINTS TO DENY OR REVOKE DISCHARGE: DISMISSAL OR SETTLEMENT**

- (a) Contents ~~of~~ and Service of Notice of, Motion for, or Stipulation Regarding Voluntary Dismissal of Complaint to Deny or Revoke Discharge

~~A motion for the voluntary~~ Any dismissal, whether by notice, motion or stipulation, of a complaint ~~containing an objection to a~~ deny or revoke the d Debtor's discharge; pursuant to 11 U.S.C. § 727, ~~or a stipulation between the parties for the dismissal of such a complaint,~~ shall be served upon the UST, any trustee, counsel of record, and any ~~intervenors. The~~ party that has intervened in the adversary proceeding pursuant to Fed.R.Bankr.P. 7024. The notice, motion or stipulation shall contain a recital concerning the consideration, if any, for the dismissal or the terms and conditions of any agreement concerning the dismissal.

- (b) Objection to Dismissal

Unless the UST, the trustee, or another entity seeks to intervene or to be substituted for the plaintiff in the proceeding or objects to the dismissal within ~~twenty (20)~~ twenty-one (21)

days following service of the motion, the Court may grant dismiss the motion complaint and/or close the adversary proceeding, upon such terms and conditions as it deems proper, without further notice or hearing.

#### Comments

The Committee recommends that the rule be clarified, as shown, to reflect current practice. If a plaintiff files a notice of dismissal, a motion to dismiss, or enters into an agreement for dismissal of a complaint to deny or revoke discharge, other parties to the case should be given an opportunity to assume responsibility for pursuing the complaint. The rule, as revised, makes clear that other parties must be served with that pleading that would terminate the adversary proceeding and then have twenty-one days to intervene or object. Subparagraph (b) is silent as to notices of dismissal because the Court does not enter an order on same.

### **B-7055-1. DEFAULT**

#### (a) Motions Required

Notwithstanding Fed.R.Bankr.P. 7055, a party seeking the entry of a default judgment shall present file a motion to that shall be considered by the Court rather than to the Clerk Judge. - If an entry for default judgment is presented to the Clerk, the Clerk shall not, unless otherwise ordered by the Court Judge, enter the default judgment but shall direct the judgment to the Court Judge for entry.

#### (b) Proof of Service and Affidavit

A motion for default judgment must be accompanied by proof of service and an affidavit stating that the defendant(s) is not protected by the Servicemembers Civil Relief Act, P.L. 108-189; and is not an infant, or incompetent person.

#### (c) Determining Amount of Judgment

If the claim to which no response was made is for a “sum certain,” then the motion shall be accompanied by affidavit showing the principal amount due and owing, not exceeding the amount sought in the claim, plus interest, if any computed by the movant, with credit for all payments received to date clearly set forth, and costs, if any, pursuant to 28 U.S.C. § 1920. If the amount of the claim is not readily ascertainable or if the amount requested in the motion exceeds the amount stated in the claim, the Court may conduct a hearing on the motion for default judgment.

#### Comments

The Committee recommends that the rule be retained with slight modifications for clarity, including subparagraph headings.

#### Changes Made After Comment Period

Slight edit to subparagraph (b), for clarity.

### **B-7056-1. SUMMARY JUDGMENT PROCEDURE**

S.D.Ind. L.R. 56.1 applies to adversary proceedings.

#### Comments

The Committee recommends that the rule be retained as written.

### **B-7065-2. MOTIONS FOR PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS**

S.D.Ind. L.R. 65.2 applies to adversary proceedings.

#### Comments

The Committee recommends that the rule be retained as written.

### **B-7067-1 REGISTRY FUNDS**

#### (a) Interpleader and Other Deposit Motions: Contents

Any action in interpleader or that seeks to deposit funds with the Clerk pursuant to Fed.R.Bankr.P. 7067 shall include the filer's certification that the proposed deposit has been discussed with the Clerk or the Clerk's financial supervisor and that the filer understands the terms and conditions that will be imposed upon the deposit.

#### (b) Fees Charged Against Deposits

The Clerk shall deduct from income earned on registry funds invested in interest-bearing accounts or instruments a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office of the U.S. Courts in accordance with the schedule which shall be published periodically by the Director in the Federal Register. The fee shall be withdrawn whenever income earned becomes available for deduction and shall be deposited in the United States Treasury without further order of the Court. This assessment shall apply to all registry funds invested in interest-bearing accounts held outside the United States Treasury. Funds deposited with the Court pursuant to 11 U.S.C. §347(a) are not subject to this rule.

### Comments

This is a new rule and was needed to establish that fees are charged on registry funds. Pursuant to subparagraph (a), parties must contact the Clerk prior to seeking interpleader so that appropriate arrangements can be in place if an order is entered. The rule doesn't apply to unclaimed funds, and those funds do not earn interest.

## **B-7069-1. EXECUTION/ENFORCEMENT OF JUDGMENTS**

### (a) Availability of Enforcement Remedies

A trustee or Debtor who seeks to enforce a judgment in an adversary proceeding or an order of turnover for the benefit of the bankruptcy estate may pursue collection in the Bankruptcy Court.

### (a**b**) Applicability of District Court Rules

S.D.Ind. L.R. 69.1 (Execution), S.D.Ind. L.R. 69.2 (Discovery in Aid of Judgment or Execution), and S.D.Ind. L.R. 69.3 (Final Orders in Wage Garnishment) apply to adversary proceedings and to orders directing a ~~debtor~~ Debtor to turn over property, ~~but only to the extent the party seeking the enforcement of the judgment is a trustee or a debtor-in-possession, and any recovery would be for the benefit of the bankruptcy estate.~~ Answers to Interrogatories should not be filed with the Court but should be sent to the trustee or Debtor only.

~~(b) — All funds remitted to the Court under this rule shall be deposited into an interest bearing registry account maintained by the Clerk, pursuant to Fed.R.Civ.P. 67. The Clerk may accept checks and drafts, subject to collection. Full credit will be given only when the draft or check has been accepted by the financial institution upon which it is drawn. The Clerk is authorized to assess a fee for holding the funds and may disburse funds to trustee or debtor-in-possession upon being satisfied that payment may be made against the collected funds.~~

### Comments

The Committee recommends that subparagraph (b) be removed as the same subject matter is covered in new rule B-7067-1. Subparagraph (a) was split in two and the provision as to applicability moved to the beginning. Those answering interrogatories issued in the collection process are directed not to file those with the Court but to serve the trustee or Debtor-in-possession only.

## **B-8006-1. RECORD AND ISSUES ON APPEAL**

### (a) Designating Record on Appeal

~~Unless~~ If the parties ~~fail to~~ file a timely designation of record with the Clerk pursuant to Fed.R.Bankr.P. 8006 ~~designating the documents which shall constitute the record on appeal~~, the Clerk shall forward ~~to the District Court Clerk~~ a certification that no designation of record was filed.

### (b) Copies of Record

The party filing the designation of items to be included in the record on appeal shall list the items with the Court's document numbers as displayed on the docket.

### Comments

The Committee dropped reference in subparagraph (a) as to whom the Clerk forwards the certification that no designation of record was filed. The deletion is intended to accommodate direct appeals to the Seventh Circuit. Other changes are for clarity.

## **B-9006-1. PROCEDURE FOR OBTAINING ~~EXPEDITED TREATMENT~~ SHORTENED AND/OR LIMITED NOTICE OF NON-FIRST DAY MOTIONS ~~AND CONTESTED MATTERS IN CHAPTER 11 CASES~~**

### (a) General Application

This provision shall govern the procedures to be followed for any matter as to which shortened notice or expedited hearing is requested pursuant to Fed.R.Bankr.P. 9006(c) ~~f~~(a “9006(c) Request”~~)~~ except for any First Day Motion as defined by S.D.Ind. B-9013-2. The 9006(c) Request shall be considered by the Court

without a hearing. If granted, the Court will issue an Order Shortening Notice and/or Setting Expedited Hearing.

(b) Filing Requirements

A 9006(c) Request shall be made by separate written motion and shall clearly refer to the non-First Day Motion or the contested matter to which it pertains (the “~~u~~Underlying ~~m~~Motion”), shall specifically state the nature of the emergency or ~~why there is a~~ the need for expedited treatment, and shall state the time by which the notice is to be shortened or the ~~requested~~ expedited hearing is ~~requested~~ to be held. The movant shall notify the chambers of the Judge assigned to the case of the filing of the 9006(c) Request and ~~the submission of the required order. The 9006(c) Request shall be considered by the Judge without a hearing. If the Court grants the 9006(c) Request, the Court will issue the~~ shall upload or otherwise tender an Order Shortening Notice and/or Setting Expedited Hearing as described below.

~~(c)~~ Service of 9006(c) Request and Underlying Motions

~~The movant shall serve the 9006(c) Request and the underlying motion on the Service List, affected parties, and any other parties as the Court directs, by fax, e-mail, or hand delivery. If the matter is a contested matter within an adversary proceeding, service of the 9006(c) Request and the underlying motion shall be made in the manner described above but shall be served only upon all parties to the adversary proceeding and other parties as the Court may direct.~~

~~(d)~~ Contents of Order Shortening Notice and/or Setting Expedited Hearing

The Order Shortening Notice and/or Setting Expedited Hearing shall ~~contain the same information as required for the notice of hearing on First Day Motions found in S.D.Ind. B-9013-1(a), and also the following:~~ provide:

- (1) the date and time of the hearing, if any;
- ~~(1)~~2 a brief description of the relief requested in the ~~u~~Underlying ~~m~~Motion;
- ~~(2)~~3 the last date to object to the ~~u~~Underlying ~~m~~Motion, and if no objection date is established, that objections are due immediately before the hearing;
- ~~(3)~~4 that any objection must be in writing and filed with the Clerk, ~~and provide the address;~~
- ~~(4)~~5 that a copy of the written objection must also be served upon counsel for the movant, or the movant ~~itself~~, if not represented by counsel; and

- (6) the Clerk's address for the division in which the case is pending;
- (57) if no hearing was set in the initial notice, a statement that if any objection is filed, a hearing will be scheduled at a later date on the Underlying Motion and any objecting party will receive objections thereto by separate notice;
- (8) In the event the that if objections are due immediately before the hearing, the order shall also state that telephonic notice of the filing of the objection shall be given to the chambers of the Judge to whom the case is assigned.
- (cd) Service and Distribution of 9006(c) Request, Underlying Motion and Order Shortening Notice and/or Setting Expedited Hearing and Certificate of Mailing

The movant shall distribute serve, by fax, e-mail or hand delivery, the 9006(c) Request and the Underlying Motion, along with the Order Shortening Notice and/or Setting Expedited Hearing in the same manner as, on the Service List, any party that has, or claims to have, an interest in the property to be affected by the relief requested in the Underlying Motion, parties required to receive notice under the applicable Federal Rule of Bankruptcy Procedure, and any other party as directed by the Court. If the documents are more than three (3) pages in length, the movant may fax the first page of the motion with a statement as to the total number of pages in the document and instructions for obtaining all documents on the movant's website or by e-mail. If the matter is a contested matter within an adversary proceeding, service of the 9006(c) Request and the Underlying Motion shall be made in the manner described above but only upon the parties to the adversary proceeding and any other party as directed by the Court. underlying motion as provided for S.D.Ind. B-9006-1(c). No later than three (3) days before the deadline for filing objections or the hearing, the movant shall file a certificate of mailing, certifying that a copy of the Order Shortening Notice and/or Setting Expedited Hearing was sent to all parties entitled to receive notice. The certificate of mailing shall have attached as exhibits:

- (1) a copy of the Order Shortening Notice and/or Setting Expedited Hearing; and  
(2) a list of the parties to whom the order was sent.

(e) Certificate of Notice

Prior to the hearing on, or the deadline for filing objections to, the Underlying Motion, the movant shall file a certificate of notice, certifying that copies of the 9006(c) Request, Underlying Motion and Order Setting Emergency Hearing and/ or Expedited Notice were sent to all parties required to receive notice. The certificate of notice shall have attached as an exhibit to it a list of the parties to whom such copies were sent, at what address, and in what manner.

(f) Motion to Limit Notice

If expedited service on the parties required to receive under the Federal Rules of Bankruptcy Procedure is impractical or cost-prohibitive, the movant may also seek to limit notice by filing a separate Motion to Limit Notice. Unless otherwise directed, notice may be limited to the UST, Debtor, the Unsecured Creditors Committee or its counsel if applicable, or if there is no Committee, the List of 20 Largest Unsecured Creditors, the Chapter 7, 11 or 13 trustee if applicable, any party that has or claims to have an interest in the property to be affected by the Underlying Motion, and all other counsel of record.

### Comments

This rule has been slightly reorganized and reworked to clarify and/or simplify the procedure for non-first day emergency motions. Subsection (f) was added to address those situations in which a motion to limit notice is needed, as a practical matter, in order to effectuate notice on an expedited basis. Also proposed is a method for giving notice by fax when documents are voluminous.

### Changes Made After Comment Period

A minor style change to subparagraph (b), and to subparagraph (c)(8) to make parallel to preceding items in list.

## **B-9010-1. APPEARANCES**

### (a) Appearances

#### (1) Requirement in Bankruptcy Cases

Each attorney representing a party, whether in person or by filing any document (other than a proof of claim, a reaffirmation agreement, request pursuant to Fed.R.Bankr.P. 2002(g), or creditor change of address), must file a separate Appearance for such party. Only those attorneys who have filed an Appearance in a pending action shall be entitled to receive service of case documents. An attorney who files a case for a dDebtor using the Court's electronic filing system and is designated as counsel for the dDebtor in that process need not file a separate appearance for that case. ~~The filing of a petition on behalf of a debtor constitutes counsel's appearance for that debtor.~~

#### (2) Requirement in Adversary Proceedings

Counsel for the plaintiff shall file an appearance with the complaint. Counsel for a defendant, including dDebtor's counsel, shall file an appearance before filing any other pleading.



(3) Content of Appearance; Service

The appearance shall include the attorney's address, telephone number, fax numbers, and an e-mail address for electronic service. Any change to ~~or withdrawal of~~ an appearance shall be filed with the Clerk and served upon ~~the~~ all counsel of record; and the ~~d~~Debtor if not represented by counsel.

(b) Removed and Transferred Cases

Any attorney of record whose name does not appear on this Court's docket following the removal of a case must file an Appearance or a copy of the appearance as previously filed in the other venue.

Within ~~twenty (20)~~ twenty-one (21) days of removal or transfer of a case to this Court, any attorney of record who is not admitted to practice before this Court must either comply with this Court's admission policy, as set forth in S.D. Ind B-9010-2, or withdraw his/her appearance, as permitted under section (c) of this rule.

(c) Withdrawal of Appearance

(1) Successor Counsel Has Not Appeared

Counsel desiring to withdraw his/her appearance in any action shall file a motion requesting leave to do so. Such motion shall fix a date for such withdrawal; and ~~requesting counsel~~ shall ~~file with the Court~~ include satisfactory evidence of ~~written notice to his/her~~ either a written request to withdrawal by counsel's client or a written notice regarding the withdrawal from counsel to counsel's client at least ~~five (5)~~ seven (7) days in advance of ~~such the~~ withdrawal date. ~~A withdrawal of appearance when accompanied by the appearance of other counsel shall constitute a waiver of the provisions of paragraph (c) of this rule.~~

(2) Successor Counsel Has Appeared

No advance notice to client is required if an Appearance by co-counsel, who will remain in the case, or if an Appearance by successor counsel, is filed prior to or concurrently with a request to withdraw.

Comments

This Rule was amended in May 2007. The Committee proposes minor clarifications as to withdrawal and as to documents for which an Appearance is not required.

## B-9010-2. BAR ADMISSION

- (a) The bar of this Court shall consist of those persons admitted, ~~as defined by S.D.Ind. L.R. 83.5,~~ to practice ~~by the District Court for~~ in the Southern District of Indiana.
- (b) In all matters and proceedings before this Court, a person not a member of the bar of ~~this Court~~ the Southern District of Indiana shall not be permitted to practice in this Court or before any officer thereof as an attorney, unless
  - (1) such person appears on his or her own behalf as a party;
  - (2) such person is admitted to practice in any other United States Court or the highest Court of any state, is not currently under suspension or subject to other disciplinary action, and is, on application motion to this Court pursuant to subparagraph (c), granted leave to appear in a specific action; or
  - (3) such person appears as an attorney for the United States.

However, for the purposes of filing ~~a proof of claim or reaffirmation agreement~~ any document as to which an appearance is not required under S.D. Ind 9010-1(a)(1) or participating in a meeting conducted pursuant to 11 U.S.C. § 341, a creditor need not be represented or appear by an attorney.

- (c) In order to obtain leave of this Court to appear in a specific action, an attorney must file with the Court a motion to appear *pro hac vice*. ~~The~~ A separate motion must for each attorney shall be filed, shall be in a form that complies substantially with the form available on the Court's website, and shall be accompanied by:
  - (1) a check payable to ~~the Clerk,~~ "Clerk, United States District Court", in the required amount (~~equal to one-half the amount required for admission to the bar of the United States District Court for the Southern District of Indiana~~ [the amount of such fee is available at www.insd.uscourts.gov] ) or contact the Clerk of the District Court to arrange payment by credit card;
  - (2) if not admitted to practice in the State of Indiana, an affidavit that substantially complies with the form available on the Court's website; and
  - (23) a proposed form of order granting the motion.
- ~~(d) If the motion to appear pro hac vice is granted, the Clerk of the Bankruptcy Court shall forward the movant's check to the Clerk of the United States District Court for the Southern District of Indiana, along with a copy of the order granting the motion. If the motion to appear pro hac vice is denied, the Clerk of the Bankruptcy Court shall return the check to the movant along with a copy of the order denying the motion.~~

- (~~c~~d) The Court may refuse to consider or act upon any request for relief filed by an attorney who is required to obtain leave to appear and had~~s~~ failed to do so.
- ~~(f) The provisions of S.D.Ind. L.R. 83.5(d)-(g) apply in all matters pending in the Bankruptcy Court.~~
- (e) Whenever necessary to facilitate the conduct of the case, the Court may require any attorney appearing in any action in this Court to retain as local counsel a member of the bar of the Southern District of Indiana who maintains an office in this district.
- (f) The Rules of Professional Conduct, as adopted by the Indiana Supreme Court, shall provide the rules governing conduct for those practicing in this Court.

### Comments

The Judicial Conference has asked Courts to ensure that attorneys admitted to practice locally are in fact admitted in other jurisdictions as represented. Procedures are revised so that the Court can verify admission status. The State of Indiana maintains a database that is easily accessible. Confirming admission status in other jurisdictions is more challenging, and therefore the burden is placed on the attorney to provide proof of admission status elsewhere. Instead of referencing the District Court's admission rule, pertinent subparagraphs are repeated here. Subparagraph (d) addressed internal policy only and as such was dropped.

### Changes Made After Comment Period

Added instructions for paying *pro hac vice* fee by credit card.

## **B-9013-1. MOTION PRACTICE; OBJECTIONS TO MOTIONS**

### **(a) Separate Motions and Objections**

Every application, motion, or other request for an order from the Court, including motions initiating contested matters, shall be filed separately, except that requests for alternative relief may be filed together, subject to paragraphs (b) and (c). All such requests shall be named in the caption, shall state with particularity the order or relief sought, and contain a short and plain statement concerning the factual basis or grounds for the motion. If the alternative relief requested has varying requirements for notice, the notice must provide the longest of the alternative periods. **Objections to separately filed motions must also be filed separately.**

### **(b) Stay Relief or Adequate Protection Motions**

Motions seeking relief from the automatic stay or adequate protection may not be joined with any other objection or request for relief except abandonment.

(c) Motions Where Hearing Scheduled by “Block Scheduling”

Where the hearing for the relief sought in the motion is subject to the “block scheduling” procedure established by the Court, the motion shall request only that type of relief, and a request for alternative relief may not be sought in the motion.

(d) Content of Objections

As to any matter in which the Court may grant relief without a hearing in the absence of a timely objection, objections to the motion, application, or request shall contain a short, plain statement concerning the factual or legal basis for the objection. The failure to state a sufficient legal or factual basis for the objection may result in the objection being overruled without a hearing.

(e) Duty to Confer

If a motion is contested, the movant shall confer with the respondent prior to the hearing to determine whether a consent order may be entered disposing of the motion, or in the alternative, to stipulate on as many facts and issues as possible.

Comments

The Committee recommends that the rule be retained as written.

Changes Made After Comment Period

Linking of documents in CM/ECF does not work if combined objections are filed. Clerk has required separate objections for that reason, and now authority for the practice provided.

**B-9013-2. CERTIFICATE OF SERVICE**

(a) Filing

All pleadings and papers filed in a bankruptcy case pursuant to Fed.R.Bankr.P. 9013 or 9014 shall comply with Fed.R.Bankr.P. 7005-(d).

(b) Requirements

In addition to identifying the pleading or paper served, certificates of service shall ~~include the name and address of each entity and the manner of service.~~ conform substantially to the certificate of service form adopted with the Electronic Case Filing Policies and Procedures Manual and available on the Court's website.

(c) Failure to Comply

On its own motion, the Court may refuse consideration of or strike any pleading or paper for which a certificate of service has not been filed or which lacks the information required ~~above~~ by the Court's forms.

Comments

The Rule is revised to match up with the Court's new Electronic Case Filing Administrative Policies and Procedures Manual, which includes a prescribed certificate of service form. The certificate of service does not have to include the full mailing address for parties served electronically.

**9013-3. FIRST DAY MOTIONS IN CHAPTER 11 CASES**

(a) Motions Included

In order to qualify as a First Day Motion, the motion must be filed with the petition, or within two (2) ~~business~~ days thereafter, state in its caption that it is a First Day Motion, and be one of the motions included on the list below. The First Day Motions listed in (f) below shall be scheduled for an expedited hearing without any formal request by the ~~debtor~~ Debtor. Other motions will only be set for hearing on an expedited basis if accompanied by a request for expedited hearing which establishes sufficient cause for such treatment.

(b) Procedure Prior to Filing

Prior to filing, the ~~debtor's counsel~~ Debtor shall endeavor to confer with and provide copies of any First Day Motions to the UST. Counsel shall include in any First Day Motion, or in a separate pleading, a statement of efforts made to meet with the UST and affected parties prior to filing when possible. The ~~debtor's counsel~~ Debtor shall also contact the Court's senior courtroom deputy to advise that a case with First Day Motions will be filed.

(c) Procedure Upon Filing

Upon filing, the ~~debtor's counsel~~ Debtor shall contact the courtroom deputy for the Judge assigned. The Judge assigned, or a designated replacement, shall schedule and conduct a

hearing on the First Day Motions within two (2) ~~business~~ days of their filing, if possible, unless the ~~d~~Debtor requests a later hearing date.

(d) Service of First Day Motions and Notice

The ~~debtor's counsel~~ Debtor shall serve copies of all First Day Motions and notice of the hearing on the initial Service List, known counsel for any party, and named respondents. Notice of the hearing and copies of the First Day Motions shall be served by fax, e-mail, or hand delivery. If the documents are more than three (3) pages in length, the movant may fax the first page of the motion with a statement as to the total number of pages in the document and instructions for obtaining all documents on the movant's website or by e-mail. Prior to the hearing, the ~~debtor's counsel~~ Debtor shall file a certificate of service in compliance with S.D.Ind. B-9013-2. Failure to give timely notice may result in relief being denied or the hearing continued.

(e) Contents of Notice

The notice of hearing on the First Day Motions shall provide:

- (1) the date and time of the hearing;
- (2) a list by title of the First Day Motions; and
- (3) the correct mailing address, fax number, telephone number, and e-mail address of the ~~d~~Debtor's counsel.

(f) List of Included Motions

The following shall be treated by the Court as First Day Motions if filed with the petition or within two (2) ~~business~~ days thereafter:

- (1) motion for joint administration;
- (2) motion for use of cash collateral (interim hearing only) (see S.D.Ind. B-4001-2);
- (3) motion for post-petition financing (interim hearing only) (see S.D.Ind. B-4001-2);
- (4) motion to pay pre-petition employee wage claims (to the limit provided by 11 U.S.C. § 507);
- (5) motion to limit notice generally;
- (6) motion to provide adequate assurance to utilities;
- (7) motion to pay pre-petition trust fund taxes;
- (8) motion to honor pre-petition obligations to customers (to the limit provided by 11 U.S.C. § 507);
- (9) motion to vary UST financial requirements, such as motion to authorize maintenance of existing bank accounts, existing business forms, cash management system, investment procedures, etc.;
- (10) motion for authority to pay pre-petition claims of alleged critical vendors; ~~and~~
- (11) motion to reject leases and contracts: and

(12) motion to not appoint a creditors' committee pursuant to 11 U.S.C. § 1102(a)(3).

#### Comments

The only substantive change to this rule was the addition of subsection (f)(12), which was needed to address 11 U.S.C. § 1102(a)(3), and dropping the reference to 'business' days. An alternative to the faxing of voluminous documents is also proposed.

### **B-9014-1. APPLICABILITY OF OTHER COURT RULES TO CONTESTED MATTERS**

Unless otherwise ordered by the Court, the following District Court rules (~~S.D.Ind. L.R.~~) apply in contested matters other than motions to dismiss or convert a case:

- 7.1 Motion practice, length, form, and schedule of briefs
- ~~24.1 Procedure for notification of claim of unconstitutionality~~
- 26.1 Form of certain discovery documents
- 26.2 Filing of discovery materials
- 30.1 Conduct of depositions
- 36.1 Request for admissions
- 37.1 Informal conference to settle discovery disputes
- 37.3 Mode of raising discovery disputes with the Court
- 41.1 Dismissal for failure to prosecute
- 56.1 Summary judgment procedures

#### Comments

The Committee proposes dropping a reference to District Court Rule 24.1, as that rule no longer exists. All other District Court rules are still appropriate for contested matters.

### **B-9015-1. JURY TRIALS**

#### (a) Authorization

Pursuant to S.D.Ind. L.R. 39.1, the District Court has authorized the Bankruptcy Judges of this District to conduct jury trials with the express consent of all parties.

#### (b) Applicability of District Court Rules

The following District Court rules (~~S.D.Ind.L.R.~~) concerning jury trials apply unless otherwise ordered by the Court:

- 38.1 Notation of a jury demand in a pleading
- 42.1 Juror costs
- 47.1 Voir dire
- 47.2 Attorney communication with jurors
- 47.4 Six-member juries

(c) Time for Consent

Unless within 30 days after the demand for jury trial is filed the other parties to the proceeding file a consent, the Bankruptcy Judge shall request that the District Court withdraw the reference of the matter. Even if all parties consent, the Bankruptcy Judge will determine whether the request for a jury trial is proper.

Comments

The Rule is completely revised from the original, which included only subparagraph (b). Since the last version of the rules, the District Court specifically authorized the Bankruptcy Judges to conduct jury trials. Subparagraph (c) was added in response to Fed.R.Bankr.P. 9015(b), which invites Courts to set a time limit for the filing of consents.

## **B-9019-1. STIPULATIONS AND SETTLEMENTS**

(a) Notice to Court When Hearing Set

~~When a case, adversary proceeding, contested matter, dispute, claim, or controversy is settled~~ When parties reach a settlement in a matter that has been set for hearing, the parties shall promptly notify the Court of the settlement ~~or stipulation~~ and, within the time promised or as required by the Court, shall file ~~an agreed judgment or other~~ the appropriate stipulation, together with a pleading and any proposed ~~form of notice and~~ order concerning the settlement. The Court may extend ~~this the~~ time for filing upon ~~a showing of good cause request.~~ Failure to file the ~~required judgment or stipulation~~ settlement pleading may result in dismissal of the ~~pleading, motion, objection, or application upon which the~~ matter ~~was~~ at issue.

(b) Contested Matters Agreements Changing Chapter 13 Plan Terms Pre-Confirmation

---

(1) Generally



Except as set forth in (2) of this section, if an objection has been filed to a motion or application, then the settlement should be documented through an agreed entry. If the settlement is reached before an objection is filed, then the parties shall file a stipulation. The Court will enter a separate order approving either the agreed entry or the stipulation.

(2) Objections to Plans

Any objection to a plan that is resolved by plan modification shall be documented through a stipulation. Any agreement between the Debtor and the trustee or a creditor that changes the terms of the plan pre-confirmation, whether filed as an agreed entry, stipulation, or immaterial modification, will not result in a No separate order on that stipulation shall be entered, as the subsequent confirmation order will be deemed an approval of the plan as modified by the agreement. If settlement of an objection to confirmation results in no modification to the plan, the objection shall be deemed withdrawn.

(c) Adversary Proceedings

(1) Generally

Except as set forth in (3) of this section, if an adversary proceeding is settled before an answer has been filed, the parties may file a stipulation of dismissal. No Court order is entered on that stipulation. However, if the agreement of the parties resulting in dismissal contains conditions precedent or subsequent, then the parties shall file an agreed judgment. The Court shall enter a separate order on that judgment, after notice, if required.

(b2) Settlements Under Fed.R.Bankr.P. 9019(a) or (b)

When approval of a settlement or compromise ~~in an adversary proceeding~~ is required by Fed.R.Bankr.P. 9019(a) or (b), the trustee or Debtor shall file a motion to approve the settlement in the bankruptcy case and, unless otherwise ordered, the Clerk shall issue notice ~~in the bankruptcy case as prescribed by Rule 9019~~. Once the motion is granted, the parties to the adversary proceeding shall then dismiss the adversary proceeding, or file an agreed judgment, ~~or take whatever action is necessary to effectuate the compromise or settlement. so that the adversary may be closed.~~

(3) Settlements of Complaints to Deny or Revoke Discharge

Settlements of complaints to deny or revoke discharge are governed by S.D. Ind. B-7041-2.

## Comments

The Committee proposes that the rule be revised in subparagraph (a) to make clear that notice to the Court of a settlement is needed only when the matter has been set for hearing. Guidance previously provided by the Court as to proper procedure in adversary proceedings now is captured in the rule. The rule also clarifies the distinction between an ‘agreed entry’ - which should be used when an objection has been filed to a motion or application - and a stipulation - which should be used when agreement is reached without the filing of an objection. The rule spells out the unique status of stipulations resolving plan objections, which are ‘approved’ by the confirmation order.

## Changes Made After Comment Period

The attempt to distinguish between stipulations and agreed entries had its origins in a request of the Clerk. After further reflection, it was determined by the Clerk that such distinction is no longer required. Therefore, subparagraph (b) is amended to cover only concerns about Court approval of pre-confirmation agreements affecting Chapter 13 plans.

## **B-9019-2. ALTERNATIVE DISPUTE RESOLUTION**

### (a) Procedure

#### (1) Motion

Any contested matter or adversary proceeding (“controversy”) may be referred to mediation (“mediation”) by the Court or upon motion filed by any party. If the motion filed by a party certifies that all parties to the controversy consent to mediation and have been served with the motion, and the Court finds the motion to be appropriate under the circumstances, the Court may grant the motion without further notice or hearing. If the motion filed by a party does not so certify, or if the Court finds that the motion is not appropriate, the motion shall be subject to the procedures for contested motions.

#### (2) Proposed Order

The motion of a party shall be accompanied by a proposed order which shall set out any filing deadlines or hearings that may need to be rescheduled to accommodate the mediation and shall make such reasonable scheduling changes as are necessary to allow the mediation to proceed. The proposed order shall also include provisions governing the confidentiality of the mediation process in accordance with section (d) herein. If the parties have selected a mediator in accordance with section (b)(2) herein, the proposed order shall identify the

mediator and provide for compensation in accordance with the requirements of section (b)(4) herein.

(3) Pendency of Matter

Unless otherwise ordered by the Court, the parties shall remain responsible for complying with all pleading, discovery, or Court-imposed deadlines and any other applicable scheduling requirement established for the timely disposition of the controversy.

(b) The Mediator

(1) Qualification; Disqualification

Subject to approval by the Court, in its sole discretion, any person may be selected to serve as a mediator under this rule. Any person selected to serve as a mediator may be disqualified for bias or prejudice in the same manner that a judge may be disqualified under 28 U.S.C. § 144. Any person selected to serve as a mediator shall be disqualified in any matter where 28 U.S.C. § 455 would require disqualification if that person were a judge.

(2) Selection

If a proposed mediator has been agreed upon by the parties prior to the filing of the motion of a party requesting referral, the motion shall designate the name of the proposed mediator and shall be accompanied by the affidavit required by section (b)(3) herein. If the Court finds that the proposed mediator is qualified to serve, and the motion is appropriate, then the proposed mediator will be approved at the time of entry of the order referring the controversy to mediation.

If the parties have not selected a mediator or the Court disapproves their selection, the parties shall have fourteen (14) days from the entry of the Court's order referring the controversy to mediation to file a motion for retention of a mediator accompanied by the affidavit of proposed mediator as aforesaid, certifying that all parties to the controversy have agreed to the selection, which motion may be granted without further notice or hearing. In the event the parties cannot agree on a mediator or their new selection is not approved by the Court, the Court will designate three (3) mediators and each side, alternately, shall strike the name of one (1) mediator. The side initiating the controversy will strike first. The mediator remaining after the striking process will be deemed the selected mediator. The parties shall complete the striking process within seven (7) days of the Court's designation and shall file a notice of selection of the proposed mediator with the

Court accompanied by the affidavit of the selected mediator. In the event that a mediator chooses not to serve, or becomes disqualified for any reason or the Court decides to replace the mediator, the selection process will be repeated.

(3) Affidavit

A person proposed for selection as a mediator shall prepare an affidavit disclosing any connections with the parties or counsel involved with the controversy which in any way could affect the neutrality or partiality of the mediator and setting forth any other reason which could result in disqualification under section (b)(1) of this rule. The affidavit shall summarize the qualifications and the anticipated rate of compensation and terms of payment of the proposed mediator. If the parties have selected a proposed mediator, the affidavit shall be filed with the motion of a party as referred to in section (a)(1). Otherwise, the affidavit shall be filed with the motion for retention of the proposed mediator or with the notice of selection from the mediators proposed by the Court, whichever is applicable.

(4) Compensation

Subject to such other terms and conditions as the Court may impose, the mediator shall be compensated at his or her customary per diem or hourly rate for matters of comparable complexity, with such compensation and reasonable costs to be borne equally by the parties to the controversy unless otherwise agreed by the parties. Any disputes regarding the reasonableness of such fees and costs shall be determined by the Court upon motion of any party. In any controversy involving the ~~d~~Debtor or the estate of a ~~d~~Debtor as a party, the order referring the controversy to mediation may approve such party's share of payment to the mediator for up to fifteen (15) hours of time plus reasonable costs. Additional payment of compensation to the mediator by the ~~d~~Debtor or the estate shall be subject to the approval of the Court upon application therefore; provided, however, that such application, and any objection thereto or any motion disputing compensation, shall not, in keeping with the confidentiality of the mediation as provided in section (d) below, disclose the substance of confidential communications made during the course of the mediation.

(5) Oath

Before serving as a mediator, each person designated as a mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453, as if the person were a judge.

(c) The Mediation

(1) Control of the Mediation

With appropriate consideration of the interests of the parties and counsel involved in the controversy, the mediator shall control all procedural aspects of the mediation, including but not limited to: setting dates, times, and places for conducting sessions of the mediation; requiring the submission of confidential statements; requiring the attendance of representatives of each party with sufficient authority to negotiate and settle all disputed issues and amounts; designing and conducting the mediation sessions; and establishing a deadline for the parties to act upon a settlement proposal.

(2) Failure to Attend

Willful failure to attend any mediation conference, and any other material violation of this rule, shall be reported to the Court by the mediator and may result in the imposition of sanctions by the Court.

(3) Conclusion of the Mediation

(A) If the mediation results in a settlement of the contested matter or adversary proceeding, the mediator shall promptly file a report so advising the Court, signed by all parties to the controversy and their counsel. Within a reasonable time thereafter, the parties shall submit to the Court an agreed order or judgment or motion for approval of compromise of controversy, as the case may be, and provide such notice as is otherwise required.

(B) If the mediation does not result in a settlement, and the mediator, after appropriate consultation with the parties and their counsel, is reasonably satisfied that no further mediation effort is feasible at that time, then the mediator shall file a final report with the Court, serving all parties to the controversy, limited solely to that finding.

(C) Upon the filing of the settlement pleadings under section (c)(3)(A) or the mediator's report under section (c)(3)(B), the mediation shall be deemed concluded and the mediator shall be thereby relieved of all further duties or responsibilities other than approval of compensation as herein provided.

(d) Confidentiality

(1) Protection of Information Disclosed at Mediation

The mediator and the participants in mediation are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the parties or by witnesses in the course of the mediation. No person may rely on or introduce as evidence in any arbitral, judicial, or other proceedings evidence pertaining to any

aspect of the mediation effort, including but not limited to: views expressed or suggestions made by a party with respect to a possible settlement of the dispute; the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; proposals made or views expressed by the mediator; statements or admissions made by a party in the course of the mediation; and documents prepared for the purpose of, in the course of, or pursuant to the mediation. In addition, without limiting the foregoing, Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule, common law, or judicial precedent relating to the privileged nature of settlement discussions, mediation, or other alternative dispute resolution procedure shall apply. Information otherwise discoverable or admissible in evidence, however, does not become exempt from discovery, or inadmissible in evidence, merely by being used. These provisions shall not preclude a party, its counsel, or the mediator from responding in confidence to appropriately conducted inquiries or surveys concerning the use of mediation generally.

(2) Discovery from Mediator

The mediator shall not be compelled to disclose to the Court or to any person outside the mediation conference any of the records, reports, summaries, notes, communications, or other documents received or made by a mediator while serving in such capacity. The mediator shall not testify or be compelled to testify in regard to the mediation in connection with any arbitral, judicial, or other proceeding. The mediator shall not be a necessary party in any proceeding relating to the mediation. Nothing contained in this subsection shall prevent the mediator from reporting the status, but not the substance, of the mediation effort to the Court in writing, or from complying with the obligations set forth in section (c) of this rule.

(3) Protection of Proprietary Information

The parties, the mediator, and all mediation participants shall protect proprietary information during and after the mediation conference.

(4) Preservation of Privileges

The disclosure by a party of privileged information to the mediator or to another party during the mediation process does not waive or otherwise adversely affect the privileged nature of the information.

Comments

The Committee proposes that the rule be retained as written, with only time period changes.

## **B-9027-1. REMOVAL**

### **(a) Removal When Bankruptcy Case Pending in this District**

Removal of a matter pending in state Court or in a District other than the Southern District of Indiana is accomplished by filing a notice of removal as an adversary proceeding in the bankruptcy case. If the matter is filed or pending before the District Court for this District, then a request to refer the matter to the Bankruptcy Court should be filed with the District Court.

### **(b) Removal When Bankruptcy Case Pending in a Different District**

A party seeking to remove a matter related to a bankruptcy case pending in another District should provide telephonic notice to the Bankruptcy Clerk of Court for the Southern District of Indiana to receive the case number in which the removal should be filed.

### **(c) Court Review of Removal**

The Bankruptcy Court may set a hearing, upon notice to the parties, to determine the propriety of the removal and whether the Court should abstain or remand.

#### Comments

This rule is new, and seeks to address lingering confusion over removal, particularly of matters related to a bankruptcy case pending in another District.

## **B-9029-1. LOCAL RULES: GENERAL**

### **(a) Title and Citation**

These rules shall be known as the Local Rules of the United States Bankruptcy Court for the Southern District of Indiana, and may be cited as “S.D.Ind. B-\_\_\_\_.”

### **(b) Effective Date**

These rules become effective on ~~July 3, 2006~~ \_\_\_\_\_.

### **(c) Scope of Rules**

These rules shall govern all bankruptcy cases and proceedings pending or commenced in the Southern District of Indiana on or after that date.

(d) Relationship to Prior Rules; Actions Pending on Effective Date

These rules supersede all previous rules promulgated by this Court or any Judge of this Court. They shall govern all applicable proceedings brought in this Court after they take effect, and shall apply to all pending proceedings at the time they take effect, except to the extent that the Court determines that application thereof would not be feasible or would work injustice, in which event the former rules shall govern.

(e) Modification or Suspension of Rules

In individual cases or proceedings, the Court, upon its own motion or the motion of any party, may suspend or modify any of these rules if the interests of justice so require. ~~These rules may be amended subsequent to their effective date by “General Order” of the Court. Such General Orders will be posted at the Court and may be obtained from the Clerk of Court at [www.insb.uscourts.gov](http://www.insb.uscourts.gov) on the Court’s website.~~

(f) Conflicts Between S.D.Ind. L.R., Local and National Bankruptcy Rules

To the extent that any provision of the Local Rules for the United States District Court for the Southern District of Indiana (S.D.Ind. L.R.) differs from any provision of the Local Rules of the United States Bankruptcy Court for the Southern District of Indiana or the Federal Rules of Bankruptcy Procedure, or the Interim Bankruptcy Rules, then that provision of the S.D.Ind. L.R. shall not apply.

~~(g) — Compliance with Rules~~

~~Unrepresented parties are bound by these rules and any reference to “attorney” or “counsel” applies to those parties unless the context otherwise provides.~~

Comments

The Committee recommends that the rule be retained as written, with minor editing and the omission of subparagraph (g) which is unnecessary.

Changes Made After Comment Period

Dropped suggestion at subparagraph (e) that rules will be modified by general order. Proper method is to amend rules.

**~~B-9034-1. TRANSMITTAL OF PLEADINGS, MOTIONS, PAPERS, OBJECTIONS, AND OTHER PAPERS TO THE UNITED STATES TRUSTEE~~**



~~Any entity that files a pleading, motion paper, objection, or other paper except a proof of claim, a reaffirmation agreement, or a ballot, shall transmit a copy of the pleading, motion paper, objection, or other paper to the UST and shall verify such transmittal in accordance with S.D.Ind. B-5005-1(d).~~

~~[deleted]~~

#### Comments

The Committee recommends that the rule be dropped. With electronic filing, the UST receives notice of and access to all documents filed in bankruptcy cases.

### **B-9037-1    PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT**

The Court may rule upon a motion for a protective order filed pursuant to Fed.R.Bankr.P. 9037(d) or a motion to withdraw a document without notice or hearing.

#### Comments

This is a new rule to clarify that motions for protective orders under Fed.R.Bankr.P. 9037 and motions to withdraw documents - which often concern documents containing personal identifiers - may be heard ex parte, so that meaningful relief, i.e., the prompt protection of personal identifiers, may be afforded.

### **B-9070-1. DISPOSITION OF EXHIBITS**

S.D.Ind. L.R. 79.1 applies to exhibits submitted in adversary proceedings and contested matters.

#### Comments

This rule is new. The District Court has a comprehensive scheme for disposing of exhibits after a trial or hearing. The Bankruptcy Court has been using that procedure, and reference to the District Court's rule is appropriate.